

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, January 11, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting; Yearly Agenda	Chairman Wills

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
Phone: (208) 332-1127
email: snemore@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 11, 2012
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
ABSENT/EXCUSED: Representatives Burgoyne, Killen, Shirley
GUESTS: Bill Roden, Lobbyist; James McMillan, Citizen

Chairman Wills called the meeting to order at 1:38 p.m.

All committee members received copies of the administrative rules.

Chairman Wills welcomed everyone and recognized that the committee retained all of its members from last year. He is excited about all the good work the committee will do this year and hopes we can be both thorough and efficient in passing legislation.

Chairman Wills introduced the **Committee Secretary, Stephanie Nemore**, as well as **Page, Drew Nelson**.

Vice Chairman Luker addressed the rules the committee will review and outlined on which day each rule will be discussed. The committee will address the rules over the course of three meeting days.

Day 1 (1/17/12): Pending Rules: **Docket No. 05-0102-1101** Rules and Standards For Secure Juvenile Detention Centers, **Docket No. 11-1003-1101** Rules Governing The Sex Offender Registry, **Docket No. 57-0101-1101** Rules of the Sexual Offender Classification Board, and Proclamation **Docket No. 06-0101-1101** Rules of the Board of Correction.

Day 2 (1/19/12): Temporary Rules; **Docket No. 11-0301-1201** Rules Governing Alcohol Testing, **Docket No. 11-0501-1101** Rules Governing Alcohol Beverage Control, and Pending Fee Rule **Docket No. 11-1002-1101** Rules Establishing Fees For Services-Idaho Criminal Justice Information System.

Day 3 (1/23/12): Address Pending Rules: **Docket No. 11-1101-1101, 11-1101-1102, 11-1101-1103** Rules of the Idaho Peace Officer Standards and Training Council, **Docket No. 11-1102-1101** Standards and Training Council Rules of the Idaho Peace Officer Standards and Training Council For Juvenile Detention Officers, **Docket No. 11-1106-1101** Rules of The Idaho Peace Officer Standards and Training Council For Juvenile Detention Officers.

Vice Chairman Luker noted that there was a preliminary review of one the rules on Page 52 of the Pending Rules packet by the Senate and House Committee with a recommendation to object to that rule. Committee members will receive a copy of the minutes from the 11/14/2011 subcommittee meeting that contains the preliminary review of the rule. Those minutes will be distributed at the January 17th committee meeting and committee members can reference a copy of those minutes before the rule is reviewed at the January 23rd committee meeting.

ADJOURN

There being no further business to come before the committee, the meeting was adjourned at 1:47 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 17, 2012

DOCKET NO.	DESCRIPTION	PRESENTER
	Idaho Department of Juvenile Corrections Rule:	
<u>05-0102-1101</u>	Rules and Standards For Secure Juvenile Detention Centers	Sharon Harrigfield, Director
	Idaho State Police Rule:	
<u>11-1003-1101</u>	Rules Governing the Sex Offender Registry	Col. G. Jerry Russell, Director
	Sexual Offender Management Board Rule:	
<u>57-0101-1101</u>	Rules of the Sexual Offender Management Board	Kathy Baird, Management Assistant
	Idaho Department of Corrections Rules:	
<u>06-0101-1101</u>	Proclamation: Rules of the Board of Correction	Lorenzo Washington, Policy Coordinator Brent Reinke, Director
<u>06-0101-1201</u>	Emergency Proclamation: Rules of the Board of Correction	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

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Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 17, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative Smith(24)

GUESTS: Dawn Peck, Idaho State Police; Lorenzo Washington, Idaho Department of Corrections; Kathy Baird, Sex Offender Management Board (SOMB); Sharon Harrigfeld, Idaho Department of Juvenile Corrections; Karen Skow, Idaho Department of Juvenile Corrections; Steven Jett, Southwest Idaho Juvenile Detention Center (SWIJDC); Fairy Hitchcock, Hitchcock Family Advocate; Mark Kubinski, Idaho Department of Corrections/Attorney General; Holly Kole, Idaho Prosecuting Attorneys Association (IPAA)

MOTION: **Chairman Wills** called the meeting to order at 1:30 p.m.

Chairman Wills made a motion to approve the minutes of the January 11, 2012, meeting. **Motion carried by voice vote.**

Chairman Wills turned the gavel over to **Vice Chairman Luker** to conduct the rules review.

DOCKET NO. 05-0102-1101: **Sharon Harrigfeld**, Idaho Department of Juvenile Corrections, presented **Docket No. 05-0102-1101**, the Rules and Standards For Secure Juvenile Detention Centers. She introduced **Steven Jett**, Director of the Southwest Idaho Juvenile Detention Center (SWIJDC).

In response to Committee questions, **Mr. Jett** explained that in most cases, the health authority is a contracted medical provider and will vary depending on the detention center. He said the legal representative of a juvenile should be the party with access to the juvenile's records, not the juvenile him/herself.

Mr. Jett then explained that the use of the electroshock device would be initiated by detention staff, but the purpose of the rule is to limit the use of the devices as much as possible.

Mr. Jett next addressed the change in timing for compliance reviews and explained that department representatives must complete the compliance monitor review by going to all 12 Detention Facilities over the course of 2-3 months. The 30-day window, in the previous rule, was almost never met. This new time frame allows the department representatives from the relevant county to formulate the final report while meeting the needs of the commissioner and complying with the standards.

In response to questions regarding the definition of "unusual incidents," (found in subsection h), **Mr. Jett** explained these are things like incident reports and other documentation they want to include in the shift log.

In response to questions regarding replacement of "juvenile" with "legal representative," **Mr. Jett** explained that this mostly deals with any records with other juvenile names. Regarding the juvenile's right of review and committee concerns that the juvenile had been written out of the rule, Mr. Jett explained that in the old standard, the juvenile had access and this created a concern for the legal representatives. Mr. Jett then affirmed the assertion that the juvenile would still have access to their record in conjunction with their legal representative.

Responding to a question regarding the potential for juveniles being in juvenile detention centers past the age of 18, **Mr. Jett** stated that this scenario almost never happens and agreed it would be easy to include a section in the rule that clarifies juveniles can access the records alongside the representative. Mr. Jett deferred to **Sharon Harrigfeld** to answer questions regarding changes necessary under the Prison Rape Elimination Act (PREA). Ms. Harrigfeld explained the department wanted to be proactive in setting standards of the definition of sexual abuse of residents and changes to the rule distilled the two sections into one comprehensive section.

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 05-0102-1101**, except for **subsection 215.03**. Rep. Jaquet emphasized the need to have the stricken language remain because it is important to have clarification on the following point: access by the juvenile is allowed unless it is unsafe. **Voice vote was taken on the motion, Vice Chairman Luker** was in doubt so a roll call vote was called.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 05-0102-1101** except for **subsection 215.03**. **Motion failed by a vote of 7 AYE, 7 NAY, and 1 Absent/Excused. Voting in favor of the motion: Reps. Ellsworth, McMillan, Perry, Sims, Burgoyne, Jaquet, and Killen. Voting in opposition to the motion: Reps. Luker, Nielsen, Shirley, Hart, Bolz, Bateman, and Chairman Wills. Rep. Smith (24) was absent/excused.**

MOTION: **Rep. Shirley** made a motion to approve **Docket No. 05-0102-1101** with a recommendation to the Department of Juvenile Corrections to make appropriate corrections to restore original access by the juvenile through a temporary rule.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 05-0102-1101**. **Motion passed by a vote of 8 AYE, 6 NAY, and 1 Absent/Excused. Voting in favor of the motion: Reps. Luker, Nielsen, Shirley, Hart, Bolz, Bateman, McMillan and Chairman Wills. Voting in opposition to motion: Reps. Ellsworth, Perry, Sims, Burgoyne, Jaquet, and Killen. Rep. Smith (24) was absent/excused.**

DOCKET NO. 11-1003-1101: **Dawn Peck**, manager of the Idaho State Police Bureau of Criminal Identification presented **Docket No. 11-1003-1101**. She began by explaining the changes to Title 18, Chapter 83, the Sexual Offender Registration Notification and Community Right-to-Know Act, made in the 2011 Legislative Session. The changes put the appeals process in place, clarify some of the definitions, define the processes involved in the sex offender registration process, and define law enforcement and other jurisdiction notifications, the expungement process and the determination of substantially equivalent or similar crimes. She also explained that the suggested changes received from Legislative Services and **Vice Chairman Luker** have been incorporated into the text of the rule. The agency has received no further comments on the rule.

MOTION: **Rep. Bolz** made a motion to approve **Docket No. 11-1003-1101**. **Motion carried by voice vote.**

DOCKET NO. 57-0101-1101: **Kathy Baird**, Management Assistant for the Sexual Offender Management Board (SOMB) presented **Docket No. 57-0101-1101**. She stated that negotiated rulemaking was not conducted on these rules. She also said the Legislative Services Office (LSO) did not have any concerns with the rules. The SOMB, having gone into effect 7/1/2011, assumed all the responsibilities of the old board. All of the name references to the board have been changed. Certain parts have been eliminated such as the violent sexual offender classification and other various nomenclature throughout the rule.

MOTION: **Rep. Ellsworth** made a motion to approve **Docket No. 57-0101-1101**. **Motion carried by voice vote.**

DOCKET NO. 06-0101-1101: **Lorenzo Washington**, Policy Coordinator for the Idaho Board of Corrections, presented **Docket No. 06-0101-1101**. He explained that the rule went into effect 11/4/2011, and the emergency proclamation, to be addressed next, went into effect 1/11/2012. He reminded the committee that the rulemaking process for the Board of Corrections differs from other agencies; the Board doesn't have to hold public meetings and the rule goes into effect 30 days after proposed rulemaking.

Mr. Washington explained that Section 005, subsection 06 is a change to the words that were previously omitted due to an administrative error. For subsection 06 he explained the rules were revised so as to not place their staff in harm's way because they support Idaho's execution laws.

Mr. Washington pointed to subsection 07 which was written in reaction to the department's procedure during the Rhodes execution. He explained the facility was not appropriate and the change reflects numbers in the execution unit and what the process looks like. Mr. Washington then explained the revision of this section eliminates who can serve on advisory boards, how they are selected and that the department does not have to follow advice of the advisory boards.

Vice Chairman Luker recognized **Mark Kubinski**, the Attorney General for the Idaho Department of Corrections, who responded to a question regarding subsection 06, nondisclosure, with respect to public records. He stated the need for confidentiality would outweigh the need for disclosure and creates the presumption that execution documents would fall within the exception to the rule.

When questioned regarding the number of family members allowed, **Mr. Kubinski** replied that in considering limited space and knowing how many staff members are needed, the department needed to be realistic regarding the numbers. The total allowed in the execution room has actually increased.

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 06-0101-1101**. **Motion carried by voice vote.**

DOCKET NO. 06-0101-1201: **Lorenzo Washington**, Policy Coordinator for the Idaho Board of Corrections turned to Rule 135 of the emergency proclamation. He explained that this entire section was revised due to lessons learned from the recent Rhodes execution. He said the department recognized the Warden had too many pre- and post- execution responsibilities. For example, the department learned it would be better to select media witnesses a week prior to execution rather than the day before. He said the department also learned the Warden needed authority to adjust the number of media personnel in the execution room. He further explained there could be instances where multiple death warrants needed to be carried out at one time and there may be a need for more than one sheriff, family members, etc. The committee questioned Mr. Washington regarding the phrase "most instances." Mr. Washington stated that the department can comply with the rule, but may need to make adjustments. Mr. Washington added that the intent was not to add more media.

After being recognized by the committee, **Brent Reinke**, Director of the Department of Corrections, explained that in the Rhodes case, the sentencing judge was not available in November when the execution took place and according to the rules, the department did not have the ability to add another judge to sit in the witness area (a requirement for executions). This resulted in no member of the judiciary being present. Mr. Reinke stated the additional person could be anyone and this privilege would not be abused in any way. Mr. Reinke added that the department doesn't want to force anyone to participate in the execution who doesn't want to participate. He proposed the example: "if we have someone who doesn't agree with executions, we will have someone designated to fill that opening."

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 06-0101-1201. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:30 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #3 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 19, 2012

SUBJECT	DESCRIPTION	PRESENTER
RULES REVIEW		
Docket No.	Idaho State Police	
<u>11-0301-1201</u>	Rules Governing Alcohol Testing (Temporary)	Matthew Gamette, Lab Improvement Manager
<u>RS20809</u>	Director of ISP into administrative role, greater discretion over training within Idaho Brand Board	Larry Hayhurst, State Brand Inspector, ISP
<u>RS20827</u>	Collection of Fees; Peace Officer Training	Sharon Lamm, Business Operations Manager at POST, ISP
<u>RS20864</u>	Tow truck operator regulations; criminal background check through Idaho and FBI Databases	Major Kedrick Wills, Idaho State Police
<u>RS20880</u>	Creation of third federal district judgeship for State of Idaho	Rep. Burgoyne

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, January 19, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

GUESTS: Maj. Kedrick Wills & Matthew Gamette, Idaho State Police (ISP); Jan Sylvester & Sharon Lamm, Peace Officer Standards & Training (POST)/ISP; Holly Kole, Idaho Prosecuting Attorneys Association (IPAA); Dennis Stevenson, Department of Administration

Vice Chairman Luker called the meeting to order at 1:30 p.m.

DOCKET NO. 11-0301-1201: **Matthew Gamette**, Lab Improvement Manager for the Idaho State Police (ISP), presented **Docket No. 11-0301-1201** regarding Blood Alcohol Testing (BAC). He explained the change to the rule was the addition of the words "at least" to Section 013, subsection 2c. He said "at least" 10 milligrams of sodium fluoride per cubic centimeter of blood is an adequate amount to maintain the evidentiary sample.

MOTION: **Rep. Killen** made a motion to approve **Docket No. 11-0301-1201. Motion was carried by voice vote.**

Vice Chairman Luker turned the gavel over to **Chairman Wills**. The Chairman noted a correction to Larry Hayhurst's position title on the agenda, "board" should be "brand."

RS 20809: **Larry Hayhurst**, State Brand Inspector for ISP, presented **RS 20809**. He explained this is a "house keeping" bill. He then explained that there would be no fee increase to and no power would be taken from the Idaho livestock industry. He said the proposed legislation has received much support from the industry and the Idaho Dairymen's Association. He also emphasized that the Brand Inspector and the Deputy Brand Inspectors can enforce any laws of the state, so it is important for the Idaho State Director of Police to be a part of the decision-making process. He explained, in the past, he has never made any big decisions without going to the director first, and now it is time to make this policy official.

In response to committee questions, **Mr. Hayhurst** confirmed that the inspectors are POST (Peace Officer Standards & Training) certified and the changes to the rule will have an effect on PERSI status. Mr. Hayhurst also clarified the seeming non-change to the phrase "law-enforcement" was the removal of the hyphen.

MOTION: **Rep. Smith** made a motion to introduce **RS 20809. Motion carried by voice vote.**

RS 20827: **Sharon Lamm**, Business Operations Manager at POST/ISP, presented **RS 20827**. She stated that this is a proposal to allow POST to collect fees for training equipment and non-POST training. She then explained POST currently collects dormitory room fees and has been doing this without specific statutory authority. She said the proposed legislation is structured to recoup costs of services provided and will allow POST to establish a fee structure for private entities and non-law enforcement institutions. Next, she explained the benefits to entities across the state. This will make academy rooms available for instructors or law enforcement personnel for a fee when in the Meridian area. The fee of \$10/night provides savings to travel and lodging costs and is based on the actual cost of the room. The second major benefit is when agencies notify POST of the training they need, POST arranges these meetings and trainings. The third benefit is that the room costs will be recouped

because of the \$10/use charge. **Chairman Wills** clarified that this is something that has been done in the past and POST will now have statutory authority to do so.

Rep. Killen expressed a concern that the proposed legislation provides the authority to schedule and assess the fees, but doesn't say anything about expending those fees for that purpose. **Ms. Lamm** stated as she understood it, POST has the authority to expend the fees. Rep. Killen suggested the RS be sent back to the agency and have that language added. Ms. Lamm also confirmed POST is exempt from bed and sales tax.

In closing, **Chairman Wills** recommended **Rep. Killen** and **Vice Chairman Luker** ensure the RS contains the correct language when it comes back to the committee. Vice Chairman Luker suggested wording the RS with the following language: funds collected would be deposited in account X, and then account X would be authorized to be spent for purposes of room upkeep.

MOTION: **Rep. Bateman** made an unanimous consent to have **RS 20827** sent back to the agency for changes. **There being no objection, RS 20827 will be returned to ISP.**

RS 20864: **Maj. Kedrick Wills**, ISP, presented **RS 20864**. He explained the purpose of the proposed legislation is to create a requirement for tow truck drivers who contract with the ISP to have criminal background checks through the FBI and ID criminal databases. He added that there is currently no requirement for this.

In response to committee questions, **Maj. Wills** explained he feels the ISP has an obligation to the public to provide a tow truck driver who is not a dangerous criminal. In regards to a possible double-background check requirement between ISP and another agency, Maj. Wills stated that if this were to be the case, ISP would not have control over that. **Chairman Wills** clarified and emphasized that the potential overlap in checks would be due to timing and not the requirement itself.

Maj. Wills deferred to **Dawn Peck**, Manager of Bureau of Criminal Investigation, and she answered the remaining committee questions in regards to duplicate background checks. She explained that under federal law 92-544, for purposes of noncriminal background checks, there must be a statute that gives statutory authority to conduct a background check. Furthermore, she explained, as part of the law, the information gathered from that check cannot be shared between agencies.

Maj. Wills returned for questioning and stated that the determining factors for background-check failure would have to be addressed in ISP procedure once the proposed legislation is passed. Furthermore, he indicated there would be an appeals process for the tow truck company to use if they felt the guidelines for the background check were prejudicial.

MOTION: **Rep. Smith** made a motion to introduce **RS 20864**. **Motion carried by voice vote.**

RS 20880: **Rep. Burgoyne** presented **RS 20880**, which would create a third federal district judgeship for the State of Idaho. He explained this Joint Memorial will ask Congress to appropriate money to establish a Third Judicial District Judge in Idaho, based on need. He noted the Federal Court is very efficient court, and very competent court, and is recognized for such. There is an acute need and members of the business community recognize that this is having an effect on our commerce. He added there is a need to have these cases tried in Idaho, rather than sending them to federal courts in other states.

In response to committee questions regarding sending federal cases outside of Idaho, **Rep. Burgoyne** explained it most often happens in the intellectual property context and those cases are being filed mostly in Texas because it is viewed as though Idaho does not have the resources to hear these cases. He added that parties to a federal case may forum shop, and without a federal court in Idaho, we lose the opportunity to have Idaho juries and courts decide our issues.

MOTION: **Rep. Killen** made a motion to introduce **RS 20880. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:14 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, January 23, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>RULES REVIEW</u>		
Docket No.	Idaho State Police	
<u>11-0501-1101</u> Page 5	Rules Governing Alcohol Beverage Control (Temporary)	Lt. Bob Clements, Lt. Alcohol and Beverage Control
	Rules of the Idaho Peace Officer Standards and Training Council	
<u>11-1101-1101</u> Page 38	Basic Misdemeanor Probation Academy uses (Pending)	William L. Flink, Division Administrator for Peace Officer Standards & Training (POST), Idaho State Police (ISP)
<u>11-1101-1102</u> Page 53	Decertification reports to POST Council	William L. Flink
<u>11-1101-1103</u> Page 70	POST Council authority to grant waiver in the case of a crime reduction	William L. Flink
	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers	
<u>11-1102-1101</u> Page 74	POST-certified Detention Officer Certification Standards	William L. Flink
	Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers	
<u>11-1106-1101</u> Page 78	POST-Certification of privately contracted Misdemeanor Probation Officers	William L. Flink

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Bolz
Vice Chairman Luker	Rep Ellsworth
Rep Smith(24)	Rep Bateman
Rep Nielsen	Rep McMillan
Rep Shirley	Rep Perry
Rep Hart	Rep Sims

Rep Burgoyne
Rep Jaquet
Rep Killen

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, January 23, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Rep. Nielsen

GUESTS: Oliver Chase, Self/Veterans; Kerry Hong, Idaho Supreme Court; Fairy Hitchcock, Hitchcock Family Advocates; Ed Hawley, Administrative Rules; Lt. Bob Clements, Alcohol & Beverage Control (ABC); William Flink, Trish Christy, & R. David Moore, Peace Officer Standards & Training (POST), Idaho State Police (ISP)

Vice Chairman Luker called the meeting to order at 1:40 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the January 17, 2012 meeting. **Motion carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes of the January 19, 2012 meeting. **Motion carried by voice vote.**

DOCKET NO. 11-0501-1101: **Lt. Bob Clements**, ABC/ISP, presented **Docket No. 11-0501-1101**, which contains the Multi-Purpose Arena definition and the over-under clause. He defined an over-under establishment as one with a section designated for under-age people in a drinking establishment. He stated the rule provides specific circumstances when minors are permitted or prohibited and the rules these establishments would have to comply with. Compliance would include: an approved security plan, a comprehensive list of events sent to law enforcement, and designation of the alcohol service area. If these rules are not met, the establishment would need to have the drinking designated area posted, like in a bar.

Lt. Clements also explained that in these types of establishments, there have been incidents with gang shootings and sexual assault. The main goal of the rule is to keep the alcohol and minors separate from one another. In response to committee questions, Lt. Clements explained the purpose of requiring the establishment to sell certain food types is to show that it is not just a drinking environment. He also clarified that a wedding reception venue would not likely fall under this rule, as the reception usually is able to serve alcohol under a catering permit. Lt. Clements indicated that affected facilities, such as the Knitting Factory in Boise, helped draft the rule.

MOTION: **Rep. Shirley** made a motion to approve **Docket No. 11-0501-1101**. **Motion carried by voice vote.** **Reps. Ellsworth** and **Sims** requested that they be recorded as voting **NAY**.

DOCKET NO. 11-1101-1101: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1101**. Mr. Flink walked the committee through all of the various changes and stated the definitions were added to make the rules more clear. He emphasized a particular change to the definition of a "Level One Officer," who is permitted to work alone in his/her jurisdiction, as long as another full-time officer is on duty to supervise. He also spoke about changes to definitions within the POST-misdemeanor training rules and basic training academy requirements.

Mr. Flink next addressed the conversion of a military law enforcement officer to an ISP officer and credits available for advancement. He stated that "detention officers" in the military can use 2 years of law enforcement service to apply for an advanced law enforcement certificate. He also explained changes to communication dispatcher requirements and noted many other "nonsubstantial changes."

Oliver Chase, representing himself and veterans, testified in opposition to **Docket No. 11-1101-1101**. Mr. Chase distributed a handout and said he used to investigate felony crimes in the Air Force. He argued in opposition to this rule because he believes the POST Counsel should look at individual experience rather than use of this prescribed formula.

In response to committee questions, **Mr. Chase** said he received the information regarding his evaluation for POST-credit from the POST-certified chairman and reiterated the need to evaluate the experience on a year-to-year basis. The way it stands, Mr. Chase stated he felt he had to pick and choose which cases to speak about which failed to show the breadth of his experience. In regards to credit received, Mr. Chase indicated after filling out the assigned form, he received three months for each year he served as a special agent in the Air Force. He also stated he felt there is a difference between military and citizen law enforcement.

Mr. Flink responded to committee questions regarding a POST-certification final exam and stated the advanced certification reflects the number of hours trained. He added that the Council evaluated Mr. Chase's records and felt his hours were the equivalent to an intermediate certificate.

Mr. Flink next explained the formula that is outlined in these rules and stated he doesn't remember if Mr. Chase was present for his hearing. The committee commented that due process concerns are apparent here. Mr. Flink explained that these rules come from a long-standing custom in POST for granting credit to former military law enforcement. He further explained that if, in a scenario where a citizen law enforcement officer from another state were to apply for a position in Idaho, the Council would look at equivalency to determine hours credited. Also, this scenario would not fall under the equivalency rules used for military service.

Mr. Dave Moore, Police Chief for the City of Blackfoot, testified on **Docket No. 11-1101-1101**. He is a member of the POST Council and explained that the Council has done the best they can to set levels of certification based on guidelines developed over the years. He stated that the POST decision is done in an open meeting, and they don't have access to military training so it is hard to match hours for hours. In response to committee questions, Mr. Moore explained for the sake of fairness, the Council sets a minimum threshold for hours qualification and then recognizes any additional hours to contribute to credit for advanced training. Mr. Moore was unclear on whether there is an appeals process for a dissatisfied applicant.

Trish Christy, a POST employee, spoke about **Mr. Chase's** case in particular and stated he was informed about the ability to attend his determination hearing. Mr. Chase stated he was advised by Mr. Flink not to attend.

MOTION:

Rep. Burgoyne made a motion to approve **Docket No. 11-1101-1101**. Motion carried by voice vote.

**DOCKET NO.
11-1101-1102:**

William L. Flink, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1102**. Mr. Flink outlined the changes made to this rule: § 031.03 decertification investigations, § 031.063 Code of Ethics is retitled and divided into five sections, § 031.091 took out mandatory discretionary reporting and eligibility and includes a 10-year provision which allows an officer who has been decertified to petition for re-certification. Mr. Flink explained that in the past, once an officer was decertified, he was decertified for life. He stated that the POST Council felt this change to the rule creates greater leniency. The rule references § 091.04, which contains all additional causes for decertification, beyond the Code of Ethics itself.

Mr. Flink stated that officers who are investigated shall be given Garrity warnings. A Garrity warning is when evidence is presented to POST and the officer has the opportunity to give a truthful recount of the events without it being used against him in court. The Due Process procedures, outlined in § 091, allow the division administrator to take summary action on behavior that is serious in nature and to initiate a decertification of the officer. The individual gets a hearing, a written order containing the hearing officer's decision, and a possible date for an emergency hearing within 7 days of the order. This most often happens in the case of very serious offenses.

In regard to non-summary decertification, **Mr. Flink** explained § 092.04 provides an opportunity for a hearing in case the POST Council determines that decertification is not an emergency. The hearing will be handled in Ada County unless evidence is presented showing a hearing in another area is necessary. During the final review, POST Council has the discretion to take testimony. The decision will be based on findings of fact and conclusions of law. A notice of final decision will be delivered via certified mail. Mr. Flink added that the purpose of these revisions is to speed up the process while providing adequate due process.

Rep. Burgoyne made reference to the minutes from the joint committee meeting on November 14, 2011, and urged the committee to see the comments already made on this rule at that meeting.

In response to committee questions, **Mr. Flink** confirmed that POST records are public and operate much like a license does. Private information on those records is redacted. Regarding reporting requirements, Mr. Flink explained the 5 and 14 day window, for misdemeanor and felony offenses respectively, is to try and expedite the process.

The committee voiced a concern that these processes fall outside the Idaho Administrative Procedures Act (IDAPA) rulemaking requirements, and **Mr. Flink** referenced a provision that allows POST to make their own administrative rules that govern this area.

Rep. Burgoyne emphasized the same concerns he had in the Joint Meeting from November 14, 2011, regarding the length of decertification. He believes this penalty seems inappropriately harsh, especially in light of the possible violations that could lead to decertification. He added that there is non-protected First Amendment speech, and its seems commentary is discouraged. Exercising use of commentary could result in being barred for life. Additionally, Rep. Burgoyne voiced a concern about the discretion given to POST to evaluate the decertification-worthy conduct and pointed out that an officer would only have to be charged, not convicted, for decertification to occur. Lastly, he is concerned with adequate due process, as those who do not have the means to travel to a hearing in Ada County will likely not receive due process. **Mr. Flink** stated he believes due process concerns are met and the POST Council will look to issues of fairness in setting a hearing for the officer. In regards to protected speech, the speech elucidated in the rule would be severe speech, mostly due to media concerns.

Mr. Flink responded to additional committee questions, turning again to the IDAPA application. He stated that without this rule, the POST Council has followed the IDAPA hearing procedures and the purpose of spelling out the procedure in this rule is to bring the agency in-line with current POST practices. **Brooke Murdoch**, Legislative Services Office (LSO), confirmed that the decertification process must be in accordance with the IDAPA, and there is an emergency hearing provision under the IDAPA.

Mr. Moore, Police Chief, City of Blackfoot, explained that the POST Council is composed of 15 members, one from the AGs office, and one police chief. The Council meets three times per year and has a very burdensome agenda. During a hearing day, the Council will see 30-35 people, and this number is compounded by having to move around the state. He explained further that currently POST is governed by the lifetime decertification rule, but added that when he met with a POST interim committee, they examined implementing a rule that would authorize a probationary period, rather than lifetime decertification and a chance to appeal. **Rep. Burgoyne** expressed continued concern about the heavy-handed nature of the rule and questioned why the probationary period rule was not on the table.

MOTION:

Rep. Burgoyne made a motion to approve **Docket No. 11-1101-1102**, with the exception of portions of §091 and §092.

In support of the motion, **Rep. Burgoyne** stated that the rule goes too far and no amount of hearing procedures can correct the impact of the sanctions. Furthermore, he expressed concerns over travel costs, attorney fees, and stated that all affected officers should have the opportunity to have access to competent, professional help. In regards to committee questions about being left with the former language if we accepted these section changes, **Rep. Burgoyne** stated he would like to see the department create rules that will correct the current rules. **Vice Chairman Luker** reiterated his concern about these rules going outside the bounds of the IDAPA rulemaking procedure.

VOTE ON THE MOTION:

Motion carried by voice vote.

MOTION TO RECONSIDER DOCKET NO. 11-0501-1101:

Rep. Killen made a motion to reconsider **Docket No. 11-0501-1101**. He expressed concern regarding effects to a performing arts facility and would like clarification on the application of this rule. **Rep. Burgoyne** invoked Rule 38 stating a possible conflict of interest but would still be voting on **Docket No. 11-0501-1101**. He disclosed his personal financial interest to the potentially affected movie theatre "The Flicks." **A voice vote was taken. Vice Chairman Luker** was unsure of the outcome.

ROLL CALL VOTE:

Vice Chairman Luker requested a roll call vote to reconsider **Docket No. 11-0501-1101**. **Motion carried by a vote of 10 AYE, 3 NAY and 2 Absent/Excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Shirley, Hart, Ellsworth, McMillan, Perry, Sims, Burgoyne, Jaquet, and Killen. Voting in opposition to the motion: Chairman Wills, Reps. Bateman and Bolz. Reps. Nielsen and Smith (24) were absent/excused.**

DOCKET NO. 11-1101-1103:

William L. Flink, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1103**. Mr. Flink explained the changes seek to help synchronize the language in the rule with the statutory goal. Specifically, certain categories have been taken out of §055.03 and there have been minor deletions in §055.03(c).

MOTION:

Rep. Burgoyne made a motion to approve **Docket No. 11-1101-1103**. **Motion carried by voice vote.**

DOCKET NO. 11-1102-1101: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1102-1101**. Mr. Flink pointed to §030.02(c) and stated that this portion of the rule outlines the requirement that all officers must complete training within 12 months, however, there is opportunity to retake the test within that 12-month period. He explained §030.05(a) removes the height/weight requirement from minimum employment standards for juvenile detention officers. In closing, Mr. Flink stated §030.05(b) explains that when a jail officer changes employers and becomes a juvenile detention officer, these officers are not required to take a vision test.

MOTION: **Rep. Killen** made a motion to approve **Docket No. 11-1102-1101**. **Motion carried by voice vote.**

DOCKET NO. 11-1106-1101: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1106-1101**. He explained that this rule allows public or private agencies to provide misdemeanor probation services. In response to committee questions, Mr. Flink confirmed that this rule will allow POST to train and certify privately contracted probation officers.

MOTION: **Chairman Wills** made a motion to approve **Docket No. 11-1106-1101**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned 3:49 p.m.

Representative Luker
Vice Chair

Stephanie Nemore
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, January 25, 2012

SUBJECT	DESCRIPTION	PRESENTER
Docket Nos.	<u>RULES REVIEW</u>	
<u>11-1002-1101</u>	Rules Establishing Fees for Services (Pending Fee)	Dawn Peck, Manager Bureau of Criminal Investigation (BCI)
<u>11-0501-1101</u>	Rules Governing Alcohol Beverage Control (Temporary)	Lt. Bob Clements, Alcohol and Beverage Control, ISP
<u>RS20828</u>	Alcohol Beverage Licenses; creation of Alcohol Beverage Control Fund	Lt. Bob Clements
<u>RS20806</u>	Additional fines to violation of state drug statutes	Maj. Clark Rollins, ISP
<u>H 402</u>	Director of ISP into administrative role, greater discretion over training within the Idaho Brand Board	Larry Hayhurst, State Brand Inspector, ISP
<u>HJM 4</u>	Creation of third federal district judgeship for State of Idaho	Rep. Burgoyne
<u>SJR 102</u>	Control of State Prisons; Amendment to the Idaho Constitution	Brent Reinke, Director, Idaho Department of Corrections Paul Panther, Division Chief, Idaho Attorney General's Office

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Stephanie Nemoire
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 25, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative Nielsen

GUESTS: Susie Headle, U.S. Federal Court; Lisa Sturn & Nancy Lopez, EUDh Partnership; Keely Duke, Idaho Chapter, Federal Bar; John Zarian, Parsons; Gayle Hines, Olympic Development Program (ODP); Dennis Stevenson, Dept. of Administration; Lt. Bob Clements, Alcohol Beverage Control (ABC), Maj. Clark Rollins, Kevin Hudgens & Dawn Peck, Idaho State Police (ISP)

Vice Chairman Luker called the meeting to order at 1:32 p.m.

DOCKET NO. 11-1002-1101: **Dawn Peck**, Manager of the ISP Bureau of Criminal Identification, presented **Docket No. 11-1002-1101**. She explained the fees outlined in this rule govern the fingerprint-taking procedure for purposes such as licensing, regulation, and employment. All fees collected are deposited in a separate fund and are used for staff funding, operating costs associated with the criminal repository, applicant program, audit and training activities regarding criminal history and collection, and the central sex offender registry.

Ms. Peck emphasized the fingerprint check fee has not changed since 1996, and the name check fee, since 2001. The fees used to support these programs were once available through general fund dollars, but currently the department is operating at a deficit and anticipate funding to be completely depleted by end of FY2013. The department proposed increasing the fingerprint fee from \$10 to \$25 and the name check fee to \$20 which is lower than the department's national search (\$37/set). The department believes the increase in fees will enable them to adequately continue doing their statutorily mandated work. The new funding would be used to pay salaries to the staff who complete the processing and for the maintenance of the system used to verify fingerprint matches.

In response to committee questions, **Ms. Peck** confirmed the school districts are among the "users" listed in the rule. She indicated she has an upcoming meeting with the school districts so they can adjust their fees accordingly. In regards to increasing costs, she stated the agency has been operating at a deficit, and currently has two positions they are not funding.

MOTION: **Rep Burgoyne** made a motion to approve **Docket No. 11-1002-1101**. **Motion carried by voice vote.**

DOCKET NO. 11-0501-1101: **Lt. Bob Clements**, ABC/ISP, presented **Docket No. 11-0501-1101**. He explained the substance of the rule in the January 23, 2012 committee meeting and stood for questioning. The committee had chosen to reconsider this docket at its last meeting. In regards to the definition of multi-purpose arena inclusions, Lt. Clements explained that if the establishment is licensed to dispense alcohol, it would be allowed to apply for this permit, unless it meets one of the exceptions (multi-purpose arena). In regards to time requirements, he explained that the committee who put this rule together agreed on monthly reporting because it allowed local law enforcement enough time to adjust staffing needs.

Lt. Clements explained the central purpose of the rule was to address public safety concerns and, because certain events can attract unruly crowds, it is important that law enforcement have the necessary tools. This rule is less restrictive, providing an avenue for these establishments to sell alcohol and still allow minors on the premises. For example, this would apply to those establishments who fail to meet a restaurant permit requirement.

Rep. Burgoyne invoked Rule 38 stating a possible conflict of interest but would still be voting on **Docket No. 11-0501-1101**. He disclosed his personal interest/relationship to the potentially affected movie theatre "The Flicks." In response to committee questions about the effect on movie theatres that serve food and alcohol, **Lt. Clements** explained that these theatres are grand-fathered in by another exception and would not be affected by implementation of this rule.

Regarding questions about penalties for failing to timely inform local law enforcement, **Lt. Clements** referenced Section E, which allows 24-hour notification for an event that might require additional law enforcement staffing. The notification requirement is a part of the application for the permit and the description of the event is within the security plan.

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 11-0501-1101**. In support of the motion, she emphasized that venues are very diverse and **Docket No. 11-0501-1101** will apply to a large group of businesses. She also asked **Lt. Clements** for an assurance that the rule may be fixed in the future. Committee members expressed concerns that **Docket No. 11-0201-1101** gives the Director a very large amount of power and sees this as a threat and a burden to small businesses. **A voice vote was taken on the motion. Vice Chairman Luker** was in doubt so he called for a roll call vote.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 11-0501-1101**. **Motion failed by a vote of 7 AYE, 7 NAY, and 1 Absent/Excused.** **Voting in favor of the motion: Vice Chairman Luker, Chairman Wills, Reps. Smith (24), Shirley, Bolz, Bateman, and Jaquet. Voting in opposition to the motion: Reps. Hart, Ellsworth, McMillan, Perry, Sims, Burgoyne, and Killen. Rep. Nielsen was absent/excused.**

Upon completion of the rules review, **Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

RS 20828: **Lt. Bob Clements**, ABC/ISP, presented **RS 20828**. He explained this piece of legislation creates an Alcohol Beverage Control Fund and provides secured funding to allow the ISP to adequately enforce the Idaho liquor law. He explained that ABC conducts service checks, investigates criminal activities associated with such regulations, approves licensing and investigates serving intoxicated patrons. He stated that there is 1 ABC officer to every 5,000 establishments. In closing, he stated the overall purpose of the proposed legislation is to ensure adequate funds for staffing.

MOTION: **Rep. Ellsworth** made a motion to introduce **RS 20828**. **Motion carried by voice vote.**

RS 20806: **Maj. Clark Rollins**, ISP, presented **RS 20806**. **Chairman Wills** recognized Maj. Rollins' achievement as a newly promoted Major. Maj. Rollins explained that the proposed legislation will add a \$20 fee to all felony and misdemeanor drug offenses. These funds will be used to cover costs associated with making reports and training costs.

In response to committee questions, **Maj. Rollins** clarified that the \$20 will be in addition to the fees/fines that already exist. ISP would like to shift the burden created by violation of the drug statutes from the taxpayer to the offenders.

In regards to fees going into a donation fund, **Maj. Rollins** stated that when the fund was first established, as a drug donation fund, the funding used to come from a "checked box" on each taxpayer's income tax form. He clarified that the fee will be assessed against the criminal, for all felony and misdemeanor convictions. In regard to the offender's ability to pay, he stated that would be addressed through the probation or parole office.

Maj. Rollins stated he was unfamiliar with other states' policies on assessment of additional fees but has yet to see a conflict in court on this matter. He clarified that the effect caused by increased fees will be seen during sentencing; restitution is ordered by the court, and then the district court will assess the fees. He also confirmed that this legislation applies to all misdemeanor and felony drug convictions, which includes possession of marijuana.

MOTION: **Rep. Bateman** made a motion to introduce **RS 20806**. **Motion carried by voice vote.**

H 402: **Larry Hayhurst**, State Brand Inspector/ISP, presented **H 402**. He stated this bill places the Director of the ISP into an administrative role. He explained he has not heard any resistance or complaints from affected agencies and because brand inspectors are required to do law-enforcement work, this bill ensures the ISP Director has oversight and authority over the brand inspectors. Mr. Hayhurst stated that he believes this bill will enhance what brand inspectors already do, takes no power from the board, and will not increase industry costs.

MOTION: **Rep. Killen** made a motion to send **H 402** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.**

HJM 4: **Rep. Burgoyne**, presented **HJM 4**. He stated that this memorial encourages Congress to create and fund a third judicial federal judgeship for the State of Idaho. He emphasized that an effective judiciary is important for the preservation of society. Currently, Idahoans are often judged by judges who are not connected with our state. He stated that since the most recent addition of a federal judgeship, in 1954, federal court caseload has increased enormously, and more importantly, it is not tenable for those who have business with the federal court. He emphasized this is a very real problem for those who need to be heard in commercial disputes where federal court is the only court with proper jurisdiction. He provided figures on other states with a smaller population yet have more federal district judges than Idaho does.

Rep. Hart asked why the RS included the language "District of Idaho" rather than "State of Idaho." **Rep. Burgoyne** explained that he was unsure of why we don't call the federal court in Idaho the United States District Court for the District of Idaho but speculates the reason is because the federal court is not a state court and judges of the federal court are not state judges. He further stated that federal judges in Idaho are not selected by the state of Idaho and speculated that the federal court is called the District of Idaho because the federal courts are organized into districts. He went on to explain how larger states have multiple districts. California, for example, is divided into the southern, central and northern districts.

Rep. Hart next asked a question regarding the connection between sending federal intellectual property cases to Texas and losing some of these cases as Idaho has one of the highest patent per capita rates in the nation. He questioned whether **Rep. Burgoyne** believed Idaho to be at a disadvantage because of this. **Rep. Burgoyne** stated that it is his understanding that, for example, Micron recently had a case decided in which it was fortunate enough to prevail in the state of Texas. He has heard from colleagues who focus their practice in intellectual property who told him there are a number of cases that would be appropriate for Idaho courts, but are sent elsewhere because Idaho lacks the forum for adjudicating these cases. He stated to the extent that we have Idaho businesses that have intellectual property disputes, we want to be sure that Idaho has the resources to be on even footing with other states, so that Idaho cases do not have to be tried outside Idaho. Furthermore, he stated we (as Idahoans) want Idaho judges and juries to try these cases, and we don't want them going to another state because we don't have the resources in the federal court in Idaho to decide them.

Those speaking in support were **John Zarian**, former chairman of Idaho State Bar (ISB) Litigation Section, who is an attorney working for an intellectual property firm, and **Keely Duke**, a labor law trial attorney and President of the Idaho Chapter of the Federal Bar Association. They emphasized the extreme delay in intellectual property case adjudication in federal courts, causing the need for visiting and retired Magistrate judges to hear federal cases in Idaho. **Ms. Duke** spoke about the great impact the delay of patent law case resolution has on her clients and also spoke on behalf of **Wendy Olson**, of the US Attorney's Office, who has great concerns about non-Idaho judges deciding these cases and also the delays this causes to criminal case adjudication.

In response to committee questions about time delay, **Ms. Duke** said a federal court case will experience a delay of 2.5 to 3.5 years for a jury trial. She also stated that the process for beginning the appointment for a new judgeship can take a few months or several years before the judge is in place.

MOTION:

Rep. Killen made a motion to send **HJM 4** to the floor with a **DO PASS** recommendation. In opposition to the motion, **Rep. Bateman** stated he does not want to encourage the expansion of the federal government though recognized the need for efficiency in federal court case adjudication.

VOTE ON THE MOTION:

Motion carried by voice vote. **Rep. Bateman** requested that he be recorded as voting **NAY**.

SJR 102:

Brent Reinke, Director of the Idaho Department of Corrections, presented **SJR 102**. He introduced **Paul Panther**, Idaho AG/Chief Criminal Law Division, who provided a quick history to support the Constitutional Amendment proposal. Mr. Panther said currently, Article 10, Section 5, of Idaho Constitution, is unclear in regards to who will manage felony and misdemeanor parole. This history leaves the question: "Can the Board of Correction supervise misdemeanor probation?"

Mr. Panther explained that the insertion of the word "felony" clarifies the Board's authority to supervise. It is unknown, before the 1990s, to what extent the Board of Correction supervised misdemeanor probation. Furthermore, it is also unknown to what extent that power (if held) can be delegated away.

Regarding misdemeanor probation authority, **Mr. Panther** explained the constitutional provision governing counties, Article 18, Section 12, allows county officers to perform duties as prescribed by law. There are currently two statutes that allow counties to collect costs for that purpose. Mr. Panther noted that a Constitutional Amendment is required in order to adequately address the issue of some counties who wish to eliminate their misdemeanor probation programs.

MOTION: **Rep. Killen** made a motion to send **SJR 102** to the floor with a **DO PASS** recommendation. In support of the motion, Rep. Burgoyne pointed out that the first opportunity to fix this would be November 2012 and if we do not address this now, then the next opportunity to fix this would be in November of 2014. Furthermore, there is a risk that a court case could arise sometime between now and November 2014, and there would be no authority to enforce.

VOTE ON THE MOTION: **Motion carried by voice vote.** Representatives **Perry, McMillan, Ellsworth, Smith (24)**, and **Vice Chairman Luker** requested that they be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:15 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 31, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS20805	Minutes to Approve Increase of Peace Officer Standards and Training; POST Fee	William Flink, Division Administrator for Peace Officer Standards & Training (POST), Idaho State Police (ISP)

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills

Vice Chairman Luker

Rep Smith(24)

Rep Nielsen

Rep Shirley

Rep Hart

Rep Bolz

Rep Ellsworth

Rep Bateman

Rep McMillan

Rep Perry

Rep Sims

Rep Burgoyne

Rep Jaquet

Rep Killen

COMMITTEE SECRETARY

Stephanie Nemoire

Room: EW56

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 31, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative(s) Ellsworth, Nielsen, and Smith(24)

GUESTS: William Flink, Peace Officer Standards & Training (POST), Idaho State Police (ISP); Ken Harward, Association of Idaho Cities (AIC); Vaughn Killeen, Sheriff's Association; Dan Chadwick, Idaho Association of Counties (IAC)

Chairman Wills called the meeting to order at 1:32 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the January 23, 2012 committee meeting. **Motion carried by voice vote.**

RS 20805: **William Flink**, Division Administrator, POST/ISP, presented **RS 20805**. He explained the proposed legislation which amends Idaho Code § 31-3201B from ten dollars to fifteen dollars. He stated there are a vast number of resources governed by POST and the fee increase will provide the revenue necessary to meet the training demands of the profession. Revenues from the Chapter 3201B authorized fees account for 72% of POST's total revenues.

Mr. Flink then stated that POST projects the decline in revenues by the end of this year will be upwards of \$800,000 and at the current revenue projections for 2012, POST expects to have revenue fall below the 2006 and 2007 revenue levels. The proposed five dollar fee increase should generate an additional 1.1 million dollars and allow POST to accomplish its mission to protect all citizens throughout the state, which is done through proper training of all POST officers. Most importantly, he stated, the fee increase will create revenue that will allow POST to maintain the public's trust in POST services.

Mr. Flink pointed out the projected revenue that will be gained from the fee increase should support POST services for the next five years and emphasized that POST has been operating at a deficit for several years and the need for additional revenue is now. In closing, he stated this increase in fees will affect only those who fail to obey the law.

In response to committee questions, **Mr. Flink** confirmed that this proposed legislation is the same type of legislation, with the same fee structure, but at \$5.00 not \$1.50, that was brought before committee last year. He then proposed four possible reasons for the decline in revenue in recent years: 1) people are more careful in not violating the law, due largely to a declining economy, 2) law enforcement doesn't have as many officers as they once did, 3) the rise in the price of gas has reduced the number of officers devoted to traffic violations, and 4) other resources are using the POST fees. Committee members requested some statistics on collection rates and comparisons of conviction rates, perhaps in the form of a pie chart. Mr. Flink then clarified that the requested fee increase last year was \$1.50. Lastly, Mr. Flink noted that if this proposed legislation were not to pass, POST would have to receive statutory authority to increase charges for those going through the POST certification process as a means of increasing revenue.

MOTION: **Rep. Bolz** made a motion to introduce **RS 20805**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:45 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 01, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS21018	Divorce Actions; Parenting Coordinator Retainer Fee	Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court
RS21050	Misdemeanor Probation; extension of probationary period for DUI/Drug Court Programs	Patricia Tobias

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 01, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative Nielsen

GUESTS: Patty Tobias, Administrator of the Courts, Idaho Supreme Court (ISC); Judge Michael Dennard; Judge Jack Varin

Chairman Wills called the meeting to order at 1:31 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the January 25, 2012 committee meeting. **Motion carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes from the January 31, 2012 committee meeting. **Motion carried by voice vote.**

RS 21018: **Senior Magistrate Judge Michael Dennard** presented **RS 21018**. He stated the proposed legislation would amend Idaho Code § 32-717B and would permit a parenting coordinator to charge a retainer. He then provided some background information on the legislation and stated courts have jurisdiction over child custody cases until the children turn 18. In cases where the parents/guardians seek a modification of the child custody order, a judge may choose to appoint a parent coordinator, who is a qualified neutral party and whose purpose is to reduce misunderstandings between the parties and develop methods of collaboration in resolving disputes. The appointment of a parent coordinator would be the exception to the rule, reserved for those more difficult custody situations. Since the parenting coordinator program was created, only 22 people have applied, 9 have been removed, and only 11 are currently listed as available. Most appointed parenting coordinators have not been paid or have received incomplete payment making it quite difficult for the Court to retain these people. A retainer fee should be permitted as it should increase the amount of qualified parenting coordinator applicants.

Judge Dennard clarified that the use of a parenting coordinator does not qualify the meetings between the parties as mediation and, depending upon the issues and the role the judge has defined for the parenting coordinator, the judge will determine the amount of time the parenting coordinator will be needed. The potential issues between the parties can range from what school to attend to when summer vacation would start/stop. The Court believes these are the kind of issues, though controversial, that can be discussed in an informal setting, without a judge and/or lawyer present.

In response to committee questions regarding the difference between a parenting coordinator and a guardian ad litem, **Judge Dennard** stated that there is often confusion about the meaning of guardian ad litem and stated that in the family law context, the parenting coordinator has to possess mediator requirements plus some specialized training in domestic violence and parenting. He explained that the guardian ad litem has been able to charge for their services while the parenting coordinator has not because the guardian ad litem or "evaluator," such as a psychologist or counselor, is appointed as an expert witness to aid in some aspect of a case. The judge can oversee the compensation to the expert witness because they have been appointed by the Court. In regards to the ability of an evaluator to negotiate the fees charged, he explained the Court can adjust the amounts charged. Judge Dennard also stated that the purpose of the parenting coordinator roster is to provide the judge with a list of people available for the judge to appoint. Parties, however, are free to select whoever they want to serve as their parenting coordinator. If the judge wishes to make the selection, there is an opportunity for the parties to object to the selection.

MOTION: **Rep. Smith** made a motion to introduce **RS 21018**. **Motion carried by voice vote.**

RS 21050: **Senior Magistrate Judge Jack Varin** presented **RS 21050**. He explained the purpose of the proposed legislation is to increase the maximum length of probation for a person convicted of a misdemeanor. Under current statute, the length of probation is 2 years. This legislation will give the judge in a misdemeanor case the authority to order additional time for probation allowing the individual to go to problem-solving court. The two year time limit sometimes does not allow enough time for the person to complete a drug court/DUI court program if the program is not assigned in the initial sentence. In the most serious misdemeanor cases, this will serve as an alternative to incarceration.

In response to committee questions, **Judge Varin** stated that counties support this legislation.

In regards to the possibility of the defendant being on probation for up to one additional year, on top of the two years, **Judge Varin** explained that the person who graduates from the problem-solving court program should be on the road to recovery. However, it is helpful to have extended authority over individuals after graduation as a reminder they are still accountable. In response to concerns over whether the Court would have the authority to extend the sentence, Judge Varin agreed to do further research on whether the Court would have the authority to extend the sentence after the sentence has been handed down.

The committee questioned the constitutional limitations with respect to sentencing. **Judge Varin** explained what is currently authorized by statute and agreed to return with information about any constitutional limitations to sentence extension. He stated, in regard to possible consecutive probation extensions, that if there were to be a situation where an individual was sentenced to multiple problem-solving court programs, the intent for the proposed legislation would be for one extension, not to have extensions stacked on one another.

Rep. Perry pointed to page two, where the word "and" seemed to create two different meanings to the rule, regarding probation extension timing. She indicated that "and" was to be included in both. The motion to introduce **RS 21050** will include the change.

MOTION: **Rep. Jaquet** made a motion to introduce **RS 21050** with the insertion of the word "and" after the word "program" on page 2, line 30. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:58 p.m.

Representative Wills
Chair

Stephanie Nemoire
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 07, 2012

SUBJECT	DESCRIPTION	PRESENTER
	<u>Rules Review</u>	
Docket No. 11-0501-1101	Rules Governing Alcohol Beverage Control	Jenny Grunke, ISP Deputy Attorney General
RS20827C1	Peace Officer Standards/Training	Sharon Lamm, Business Operations Manager, Peace Officer Standards & Training (POST)/ISP
RS21160	DNA testing, cost, conditions	Matthew Gamette, Lab Improvement Manager, ISP
RS21133	Disturbing the Peace	Rep. Nonini
H 449	Police fines, enforcement donation fund	Maj. Clark Rollins, ISP
S 1219	Juvenile Corrections Act	Sharon Harrigfeld, Director, Dept. of Juvenile Corrections
S 1213	District Court/Magistrate's Division	Michael Henderson, Idaho Supreme Court (ISC)
S 1222	Judges, Language/terms revised	Michael Henderson, ISC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims(Ingram)
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 07, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims(Ingram), Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:**

GUESTS: Fairy Hitchcock, Hitchcock Family Advocates; Michael Henderson, Idaho Supreme Court; Dave Goins, Idaho News Service; Dennis Stevenson, Dept. of Administration; Mike Kane, Idaho Sheriffs Association (ISA); Terri Wedding, ADDRIS; Greg Marchant, Knitting Factory; Sharon Harrigfeld, Idaho Dept. of Juvenile Corrections (IDJC); Ronaldo A. Coulter, Hispanic Cultural Commission Col. Jerry Russell, Sharon Lamm, Business Operations Manager for Peace Officer Standards & Training (POST), Maj. Clark Rollins, & Jenny Grunke, Attorney General; Idaho State Police (ISP)

Vice Chairman Luker called the meeting to order at 1:31 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 1, 2012 committee meeting. **Motion was carried by voice vote.**

**UNANIMOUS
CONSENT
REQUEST TO
RECONSIDER
DOCKET NO.
11-0501-1101:** **Rep. Killen** requested unanimous consent to **reconsider Docket No. 11-0501-1101**. In support of the motion, he explained that since January 25, 2012, the last time the rule was revisited, some of the representatives obtained information that may change the vote. There being no objection, the request was granted.

**MOTION ON
DOCKET NO.
11-0501-1101:** **Rep. Killen** made a motion to approve **Docket No. 11-0501-1101**. **Rep. Perry** voiced concerns about statements she has heard from affected businesses who feel as though they are being bullied into complying with this rule. She stated that she felt this to be a very heavy handed rule and doesn't think the threatening nature of the rule to local businesses is appropriate.

**SUBSTITUTE
MOTION:** **Rep. Ellsworth** made a substitute motion to create a subcommittee for those who are involved in the rule. **Rep. Hart** stated that he has not been provided with any more information since the last time the rule was discussed.

**ROLL CALL
VOTE ON THE
SUBSTITUTE
MOTION:** **Vice Chairman Luker** requested a roll call vote to approve the substitute motion to create a subcommittee for **Docket No. 11-0501-1101**. **Motion passed by a vote of 10 AYE and 5 NAY. Voting in favor of the motion: Vice Chairman Luker, Reps. Smith(24), Nielsen, Hart, Ellsworth, Bateman, McMillan, Perry, Sims (Ingram), and Burgoyne. Voting in opposition to the motion: Chairman Wills, Reps. Shirley, Bolz, Jaquet, and Killen.**

The hearing was set for Thursday, February 9, upon adjournment of the regular committee meeting. **Vice Chairman Luker** appointed **Reps. Shirley, Ellsworth, Killen, Nielsen, Jaquet** and himself as subcommittee chairman.

Upon completion of the rules review, **Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

RS 20827C1: **Sharon Lamm**, Business Operations Manager for POST/ISP, presented **RS 20827C1**. She explained that the proposed legislation adds language to the Idaho Code that will allow POST to collect fees for dormitory room usage. The language in the first version of this RS failed to state that POST has the authority to spend the collected fees for the stated purpose. Subsection 2 has been added to ensure POST counsel has the authority to spend and deposit fees collected for POST dormitory usage.

In response to committee questions about the amount of monies collected, **Ms. Lamm** indicated that the amount of monies collected is expected to be similar to the amounts collected in the past. In FY2011, nearly \$80,000 was collected for basic training fees, making for a total of around \$100,000. Additionally, the legislation would allow POST to recoup some of the costs associated with use of POST emergency vehicles for training, but not to make any additional money.

UNANIMOUS CONSENT REQUEST: **Rep. Bateman** requested unanimous consent to change the word "may" to "shall," on line 21, ensuring the funds are so used and to introduce the RS with changes. In support of the motion, **Rep. Nielsen** stated he wants to ensure the reason we are introducing this is for no other purpose than to codify the law, which **Ms. Lamm** confirmed. **Rep. Jaquet** stated she is concerned with the POST dormitory competition with private entities and the exemptions for the bed tax. Ms. Lamm stated that the occupants are generally state employees. She also agreed to change the fiscal note portion of the SOP to match the changes made to the RS.

MOTION: **Rep. Smith** made a motion to change the clerical errors and changes (as outlined in the above unanimous consent request) to the fiscal note and to introduce **RS 20827C1** with these changes. **Motion was carried by voice vote.**

RS 21160: **Matthew Gamette**, Lab Improvement Manager for ISP Forensic Services, presented **RS 21160**. He explained that the proposed legislation will amend Idaho Code § 1902. He stated that all testing that can be handled by the Idaho State Police Forensic Services (ISPFS) lab will be, but that Idaho should not be required to pay for tests outside its capabilities if requested by one or more of the parties involved. The ISPFS lab offers the most common DNA testing, using supplies from the federal grant funds and state funding. However, the lab does not provide all types of DNA testing available. The ISP evaluates the speciality DNA tests that do not qualify for Combined DNA Index System (CODIS). If the necessary type of testing is not available in Idaho, the petitioner would pay for these "advanced" tests conducted at non-ISP labs. He explained this often relates specifically to post-conviction case testing; if the lab offers the petitioner-requested testing, the Idaho lab would do it, if not, the petitioner could pay for this type of DNA test. He explained further that currently ISP forensics does not outsource any testing because it is very burdensome and costly to do so.

In response to committee questions, **Mr. Gamette** stated that upgraded technologies are continually evaluated for the benefit the technologies would bring to the customers they serve. Several committee members stated their concerns and suspicions about the possibility of this proposed legislation de incentivizing ISP from looking at new testing methods. Mr. Gamette stated that he doesn't believe this will happen, and in normal test-procedure, if the test is offered in their lab, the ISP lab will offer and conduct the test at no cost to the petitioner. In regards to who the petitioner might be, Mr. Gamette stated that the petitioner could be the prosecution, court, or the defense. To date, all requests for outside lab work have been made by the defense, where the defense had requested the prosecution pay for the tests and the prosecution then went to the state requesting payment.

In regards to a possible special test rule requested by a judge as part of a due process concern, **Mr. Gamette** stated that the requesting party would still have to pay, so in this case, the cost would likely be borne by the state if the requesting party was indigent. He next clarified that subsection g on page 2 stated that the petitioner would pay the cost of the forensic analysis. The committee wished to make a clarification as to what the proposed legislation ultimately does: the exception is to have the public pay for the outsourcing DNA testing if the petitioner qualifies for such but there is an exception to the exception, that the public will only pay with respect to those testing procedures that are within the capabilities of the ISP lab. The proposed legislation defines the circumstances of who will pay between the public and petitioner. **Mr. Gamette** explained that the ISP lab is not attempting to quash testing nor to prevent the expansion of lab capabilities. Furthermore, ISP will increase the size and scope of their testing capabilities based on need. The lab has every intention to evaluate the types of DNA testing needed in the future, and this rule will only apply when the requested test is not offered at the ISP lab. In regards to a concern about a "specific type of testing" being "requested" versus "required," **Mr. Gamette** stated that either word would be appropriate in this instance.

MOTION: **Rep. Luker** made a motion to introduce **RS 21160**. **Motion carried by voice vote.**

RS 21133: **Rep. Nonini** presented **RS 21133**. He explained that the purpose is to add the following words to the Idaho Code § 18-6409: "or by conduct that seriously alarms or harasses a person such as would cause a reasonable person substantial emotional distress." He stated that he proposed a similar piece of legislation last year and tried to nestle it within the stalking statutes and this is a new approach, the intent is to address problems with stalking neighbors.

MOTION: **Rep. Smith** made a motion to introduce **RS 21133** with the insertion after the word "that," on line 9, add the phrase "is intended to." **Rep. Nielsen** is concerned about the vagueness of the language and wishes to be more pointed in regards to what the language really alludes to. **Rep. Burgoyne** pointed out that the motion to insert those words would require changing "alarms" to "alarm" and "harasses" to "harass," also on line 9.

UNANIMOUS CONSENT REQUEST: **Rep. Smith** requested unanimous consent to introduce **RS 21133** with the changes outlined by **Rep. Burgoyne**. There being no objection, consent was granted.

H 449: **Maj. Clark Rollins**, ISP, presented **H 449**. He explained that this bill would add a \$20.00 fee to establish a dedicated funding source for ISP. This places the burden on the violators and eases the burden to taxpayers. This will provide a direct benefit to city and county jurisdictions as the money would be used to target drug traffickers in these districts and will help ensure training of narcotics officers. He stated that ISP is directed by statute to control abuse of substances and because of this, racketeering and money laundering are included offenses. Essentially, there is an additional paragraph in each section stating that for all included offenses, an additional \$20.00 fee will be assessed. Distribution of the funds are outlined in the statute.

In regards to the fees currently charged, such as the drug hotline fee, **Maj. Rollins** stated that the fee is currently being used for cell-bright, a technology used to download information from cell phones. The new fees are for drug-related misdemeanor and felony drug convictions only. Also, the distribution of funds will be done in a pecking order fashion rather than a pro-rata distribution. He explained the term "donation fund" is a carryover and doesn't indicate the funds are actually procured through donation. The monies collected will be used to support ISP operations and purchases of drugs during investigations/drug busts. In regards to the SOP, the plans for future dedicated funding sources could be a prescription drug tax or an alcohol/beer tax. Lastly, he explained that racketeering is an included offense because it is often implicated in larger drug busts.

Maj. Rollins deferred to **Mike Henderson**, of the Idaho Supreme Court, to answer committee questions in regards to the likelihood that ISP will actually be able to collect these fees. Mr. Henderson agreed to supply numbers to the committee indicating the fees actually assessed and collected and further explained that the idea behind the proposed legislation is to establish a system to fairly assess fees and address priorities. **Rep. Nielsen** voiced a concern over whether the fees specified would be "double-dipped" in JFAC by the ISP.

MOTION: **Rep. Killen** made a motion to send **H 449** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Killen** will sponsor the bill on the floor.

S 1219: **Sharon Harrigfeld**, Idaho Dept. of Juvenile Corrections (IDJC), presented **S 1219**. Ms. Harrigfeld introduced **Nancy Bishop** the Juvenile Corrections Attorney General. Ms. Harrigfeld explained that **S 1219** is a housekeeping bill and will define "juvenile" as "a person who has not been adjudicated" and a "juvenile offender" is "an individual, under the age of 18, who has already been adjudicated." Additionally, the transfer from Health and Welfare to IDJC are necessary to allow IDJC to fulfill its duties to provide substance abuse treatment in juvenile county systems. This will also remove all references to the Department of Health and Welfare.

In response to committee questions, on page 5, line 41, § 18, **Ms. Harrigfeld** explained "non-architecturally secure facility" is something like the Idaho Youth Ranch, where the staff keeps the children secure and the doors are not locked.

MOTION: **Rep. Nielsen** made a motion to send **S 1219** to the floor with a **DO PASS** recommendation. **Rep. Smith** questioned whether the funding for this would come from the IDJC budget. In regards to questions about the definition of juvenile offender, **Ms. Harrigfeld** explained that the juvenile offender would be anyone who is convicted of an offense under the age of 18 and can be in juvenile detention until age 21. She clarified, prior to the changes, "juveniles in custody" was the only definition of juvenile offender, so the statute clarifies that a juvenile who has been charged and convicted would be considered a "juvenile offender."

VOTE ON THE MOTION: **Motion was carried by voice vote.** **Reps. Nielsen and Smith (24)** will sponsor the bill on the floor.

- S 1213:** **Mike Henderson**, legal counsel for the Idaho Supreme Court, presented **S 1213**. He explained this bill corrects certain effects and omissions in the law. The court structure, before 1971, was composed of district courts plus local courts. Title 19, criminal procedure, and Title 39, dealt with probate and justice courts, which are now magistrate division courts. In regards to the statute handout (Title 19, Chapter 30), there is reference to \$4/day compensation plus mileage costs creating a conflict between the two statutes. The bill takes out the language regarding witness fees and mileage as provided in Title 19 Chapter 30.08. He emphasized that there would be no additional fiscal cost. If there is a request for a "special inquiry judge" investigation for crime/corruption, the prosecutor may want to call witnesses. The prosecutor can petition the district judge to appoint a magistrate judge for special inquiry proceedings. An example of this is when the coroner is suspicious of a death in their county, the coroner may act as a judge, organize a 6 person jury, take witnesses, and resolve issues relating to death and provide information for possible future criminal proceedings. Under Idaho Code § 2-215, jurors get \$10/day (generally), and this provides an update to this fee, meaning the jurors will receive the same mileage as § 2-215 allows for witness and juror fees.
- MOTION:** **Rep. Ellsworth** made a motion to send **S 1213** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.
- S 1222:** **Michael Henderson**, Idaho Supreme Court, presented **S 1222**. He explained that the purpose of the legislation is to try and update references to probate and justice courts by cleaning up the language in the statute. The probate, police and justice of the peace courts mentioned in Idaho Code § 1-103, should now be "magistrate courts." § 10 of the bill repeals the outdated procedure and § 24, Certification of Documents, should read "have acknowledgement before justice of peace, need certificate of the recorder." This is an outdated provision as there are no justices of the peace any longer.
- MOTION:** **Rep. Bateman** made a motion to send **S 1222** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bateman** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:04 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 09, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21125</u>	Motor Vehicle title transfer fees	Dawn Peck, Manager of Bureau of Criminal Investigation, ISP
<u>RS21165</u>	Domestic Violence	Rep. Trail
<u>H 455</u>	Divorce Actions	Hon. Michael Dennard
<u>H 475</u>	Probationary Period; Misd. probation	Hon. John Varin
<u>H 450</u>	Alcohol Beverage Control Fund	Lt. Bob Clements, ISP

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims(Ingram)
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Stephanie Nemoire
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 09, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims(Ingram), Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None.

GUESTS: Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Tyler Mallard, Governor's Office; Judge Jack Varin, Idaho Supreme Court (ISC); Judge Michael Dennard & Michael Henderson, Idaho Supreme Court; Annie Kerrick, Idaho Coalition Against Domestic Violence; Benjamin Davenport, Risch/Pisca; Ken Burgess, Idaho Licensed Beverage Association; Dawn Peck & Lt. Bob Clements; ISP

Chairman Wills called the meeting to order at 1:33 p.m.

RS 21125: **Dawn Peck**, Manager of the Bureau of Investigation, ISP, presented **RS 21125**. She stated that the proposed legislation seeks to maintain stable funding source for the Idaho Law Enforcement Technology Service (ILETS). The primary purpose is to provide a dedicated and secure public information system providing law enforcement a means of reliably providing needed criminal justice information from state and federal systems.

Ms. Peck explained that ILETs has a 6-member Board who establish policies relating to management of operations of the ILETs system. This Board has formulated a plan that identifies major projects which need immediate attention, such as the replacement of critical equipment used to support the system. Currently, ILETs is funded through a combination of subscriber payments for access and transaction fees, along with ISP funded support. The Board has recognized that the current funding structure is inadequate to sustain daily operation and required infrastructure. Recognizing that the ILETs system is used to support and provide for public safety in use of the highway systems in the state, there is a real nexus to an "ILETS Transaction Fee" of \$8 for each title transfer of a motorized vehicle.

In response to committee questions, **Ms. Peck** clarified that in the past there has been federal funding sources for the system, but federal sources are no longer available. Committee members requested a spreadsheet to see how much money is currently generated from each of the current funding sources. Ms. Peck agreed to provide the funding information and added that when the current fee structure was implemented, ISP was directed to support 25% of funding, and currently provides 48%. Regarding coordination with other agencies such as the Department of Transportation, Ms. Peck indicated that POST had worked with them last year on this topic but is unclear as to whether they are in direct support of this proposed legislation. **Rep. Nielsen** clarified on the Fiscal Note portion of the SOP, a change to "there would be no fiscal impact."

Rep. Sims invoked Rule 38 stating a possible conflict of interest but she will be voting on the RS.

MOTION: **Rep. Burgoyne** made a motion to introduce **RS 21125**. **Motion was carried by voice vote.**

RS 21165:

Rep. Trail presented **RS 21165**. The proposed legislation would extend protections to victims of domestic violence (DV) by amending the current DV statute(s). Statistics state that nationally, 64-74% rapes go unreported to police. The current statute doesn't allow for victim protection in many domestic relationships because a civil protection order only covers victims in a certain relationship. For example, in a stalking situation, many times the stalker is unknown to the victim and thus would not come within one of the protected relationships. Currently, the length of a protection order is 14 days. This proposal is to change this to 10-28 days.

Rep. Ringo stated that she has spoken with a church pastor who works with DV victims and with Latah County Prosecutor Bill Thompson on these changes to the law. She conveyed that Mr. Thompson is concerned that those who are already victims have had to assume heightened burdens to get the protection they need. Next, she deferred to **Annie Kerrick** at the Idaho Coalition of Sexual and Domestic Violence. Ms. Kerrick stated that the name of the act would expand to include new categories covered by the act. On page 2 she outlined the definitions that would be updated to include new crimes and definitions to be added, including false imprisonment. In Idaho Code § 39-6304, the majority of the changes address victims of sexual assault and stalking. There is a clarification of the degree of risk, even if perpetrator lives more than 100 miles away. Idaho Code § 34-6306 extends the timing of an ex parte civil protection order where a full hearing needs to be 10-28 days from the issuance of the ex parte protection order. The addition covers victims of sexual assault and stalking. She explained the next major change, on page 6, line 1, subsection 7, which provides that the petitioner's address does not have to be disclosed and rather the petitioner can provide a "safe address" for service of process. Also, there is cleanup language in subsection e. In Idaho Code § 39-6306, which removes of the initial one year time limit, allowing a possible permanent protection order, which would cut down on court costs.

In response to committee questions, **Ms. Kerrick** stated that the victim would receive protection before the "10 day minimum" time frame in the form of the temporary protection order and explained further that when the petitioner files for a protection order, the temporary order would be issued within about one day. She explained that in some jurisdictions, as the law is now, some judges are scheduling the full hearing within 48 hours of the filing of the request for a protection order. Both the victim and respondent are unable to secure an attorney in that time frame and the court ends up having to grant an extension.

Rep. Burgoyne noted a change to the proposed legislation, on page 5, line 32. He suggested a comma between "stalking" and "solely" because these are separate justifications. Ms. Kerrick agreed these were separate clauses and would make the change. The committee also questioned support for the legislation and Ms. Kerrick stated that the Idaho Prosecuting Attorneys Office are in support, but she has not yet spoken with the Idaho State Bar Association. In regards to the definition of "false imprisonment" and its lack of use in another place in the legislation, Ms. Kerrick explained that "false imprisonment" is the definition as defined in the Idaho Code for this offense. The committee also suggested a change on page 3, line 32, "has been" should be "is," Ms. Kerrick agreed to make the change. Also, in regards to the word "annoys" on page 7, line 9, she explained that this is the verbiage from the stalking statute.

MOTION:

Rep. Ellsworth made a motion to introduce **RS 21165** with the changes on page 3, line 22 to delete "has been" to "is" and to insert a comma on page 5, line 32 before the word "stalking." **Motion was carried by voice vote.**

H 455:

Judge Michael Dennard, Idaho Supreme Court, presented **H 455**. He stated that the purpose behind the bill is to amend Idaho Code § 32-717D. This will allow parenting coordinators to charge a retainer fee. Parents frequently return to court to change custody or other issues that don't need re-litigation but come before the court because parents are unable to parent cooperatively. He explained that the purpose is to reduce misunderstandings, clarify priorities, and develop methods of collaboration. Parenting coordinator appointments are made in recurring cases, and it is difficult for the court to find people to fill these positions without providing payment for their service. Currently, 22 people have applied, 9 have been removed, and 12 are listed for reappointment. In closing he stated that allowing parenting coordinators to charge a retainer fee will help the court to maintain a list of qualified persons.

In response to committee questions, **Judge Dennard** explained that parenting coordinator compensation is listed on the roster, enabling the parties to compare hourly rates. He clarified that the purpose of this bill is to control the qualifications and background and regulate the ability of a parenting coordinator to be paid for their services. However, the court cannot control the payments to these coordinators, often resulting in nonpayment or incomplete payment. Also, he stated that the court does have the authority to appoint a parenting coordinator, but the parties can request a hearing to object to the appointment.

MOTION:

Rep. Ellsworth made a motion to send **H 455** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

H 475:

Judge John Varin, Idaho Supreme Court, presented **H 475**. He explained that high risk and high need substance abusers need to go to problem-solving court as part of their sentence. In regards to the court's constitutional authority to extend probation sentences, he stated that Article 1, Section 13 of the Idaho Constitution, covers the guarantees and due process rights as well as right not to be deprived of life, liberty and property. Idaho Code § 19-3921 gives the court discretion to order probation. Further, he explained that the granting of probation is not a due process issue, but the conditions of probation are. Probation may be extended or terminated but may not extend maximum sentence time limit.

In response to committee questions, **Judge Varin** stated that there may be an increased probationary cost to counties. He stated that he knows of no firm number, but since these people are already on probation, it won't be a significant cost. Additionally, in regards to whether the county commissioners are informed about increased costs he deferred to **Michael Henderson**, ISC. Mr. Henderson stated that there will be a net savings to counties because the use of problem-solving courts provides an alternative to incarceration, which is more costly than probation, at the end of the probationary period.

MOTION:

Rep. Shirley made a motion to send **H 475** to the floor with a **DO PASS** recommendation.

In support of the motion, **Rep. Luker** explained his due process concerns. He stated that the maximum jail time for misdemeanors is usually one year, and sometimes the sentences can be shorter. The core issue is whether notice and due process is changing after the sentence has been imposed. Judge Varin stated that probation is the court's discretion and the court has the ability to order full sentences or rather can order shortened incarceration time with subsequent probation. Rep. Luker suggested the addition of a provision that would provide notification that the offender could be subject to a 2 year sentencing provision, plus a possible year. **Michael Henderson** emphasized that the extension of probation in the felony context is permissible for many years and provided a case study: a judge ordered probation and restitution, when restitution was not near being paid at the end of the probation period, the probation term was extended.

VOTE ON THE MOTION:

Motion was carried by voice vote. Rep. Shirley will sponsor the bill on the floor.

H 450:

Lt. Bob Clements, ISP, presented **H 450**. He stated that the Idaho Constitution allows the Idaho Legislature to regulate intoxicating liquors. Under this direction, the Idaho State Police (ISP) shall investigate all alcohol license applications. Currently, the Alcohol Beverage Control (ABC) unit has one detective for the entire state. ABC conducts background and underage drinking compliance checks. Additionally, ABC provides training and guidance to licensees and is required to enforce the "aid to retailer" program. As of July 2005, each agent was determined to be responsible for monitoring 268 licensed establishments. This means that there should currently be 23 ABC officers. As it stands, ABC cannot adequately comply with their duties to regulate alcohol licensing.

In response to committee questions, **Lt. Clements** clarified that the sheriff's department and local law enforcement help enforce the laws, but the background investigations and regulation of liquor smuggling is specifically mandated to be completed by the ABC. Additionally, he confirmed that he needs \$1.5 million dollars for a separate fund which would allow ABC to hire approximately 10 officers plus 2 support staff, which would return ABC to 1964 staffing levels. Lt. Clements clarified that ABC's mission is to encourage the maintenance of the legal sale of the alcohol, but curtailing the use of alcohol is outside the scope of their duties.

Ken Burgess, who represented the Idaho Licensed Beverage Association, composed of bar owners and restaurants, stated that association members generally support the proposal, which will allow ABC to do their job effectively. He said there is a lack of consistency of enforcement of the laws. He suggested a need to train hospitality and law enforcement in the event of a violation and to have proactive measures in place to prevent violations before they occur. Also, he stated a need to reduce timelines for approval, make the licensing processing easier to navigate, and that the background/inspection checks are lengthy and burdensome. In conclusion he stated that he believes this legislation will go a long way towards providing public safety and meeting needs of affected parties.

Jeremy Pisca, an attorney representing beer and wine distributors, stated that his clients are in support of this bill. He suggested that user fees should go to support license enforcement. He provided testimony about a case where wholesalers in northern Idaho failed to comply with warehousing rules, and it took over a year for ABC to file a complaint against the violators, which shows the lack of resources available.

MOTION: **Rep. Killen** made a motion to send **H 450** to the floor with a **DO PASS** recommendation, subject to a change in the SOP, within the fiscal note. He said that "FY2010" is listed twice. The figure for FY2010, after FY2008, should actually be FY2009. **Rep. Jaquet** pointed out that the \$1.5 million dollars from the general fund will have to be replaced if this bill is passed. In regards to compliance checks, she said that 30-40 years ago it was possible to have an ABC officer come to your business and this is not the case today. Additionally, she stated that ABC generated funds that go into the general fund are used to pay for alcohol treatment programs.

VOTE ON THE MOTION: **Motion was carried by voice vote. Reps. Perry and Jaquet** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned 3:01 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
LUKER SUBCOMMITTEE
Docket No. 11-0501-1101
Upon Adjournment of the Full Committee
Room EW42
Thursday, February 09, 2012

DOCKET NO.	DESCRIPTION	PRESENTER
11-0501-1101	Rules Governing Alcohol Beverage Control	Lt. Bob Clements, ISP

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Luker
Rep.Nielsen
Rep.Shirley
Rep.Ellsworth
Rep.Jaquet
Rep.Killen

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE LUKER SUBCOMMITTEE

DATE: Thursday, February 09, 2012

TIME: Upon Adjournment of the Full Committee Meeting

PLACE: Room EW42

MEMBERS: Representatives Luker, Nielsen, Shirley, Ellsworth, Jaquet, Killen

**ABSENT/
EXCUSED:** None.

GUESTS: Jared Tatro, Office of Performance Evaluations (OPE); Jeremy Pisca, Idaho Beer & Wine Distribution Association; Mike Kane, Idaho Sheriff's Association (ISA); Tyler Mallard, Office of the Governor; Ronaldo A. Coulter, Hispanic Cultural Commission; Greg Marchant, Knitting Factory Entertainment; Dennis Stevenson, Dept. of Administration; Lt. Bob Clements & Col. Jerry Russell, Idaho State Police

Chairman Luker called the meeting to order at 3:15 p.m.

DOCKET NO. 11-0501-1101: **Lt. Bob Clements** presented a brief summary of **Docket No. 11-0501-1101** as the docket had already been presented in previous meetings. He then stood for questions. In regards to the definition of "multi-purpose arena," committee members voiced a concern that this definition will threaten businesses in small, rural communities, if required to comply. Lt. Clements explained the process in greater detail: under Idaho Code § 33-21 minors are restricted from entering or remaining in certain places such as "taverns, bars, and cocktail lounges." However, there is an exception that allows a minor to be present in a bar/restaurant where the minor is excluded from the bar portion of the restaurant. A venue, with a bar, that does not qualify as a "restaurant" may apply for a multi-purpose permit that would allow minors admittance for an all age event if no alcohol is available. The descriptions within the rule, such as a bachelor's party or a heavy-metal concert, exist because these events could draw a different crowd requiring increased security and special planning may be needed. Ultimately, this rule opens up a chance for minors to be in a place where they would otherwise be prevented from entering.

In response to committee questions, **Lt. Clements** stated that a minor may be in a restaurant that also contains a bar but the minor may not sit in the bar area. In the case where the restaurant is one large room, the bar area would need to have a sign posted indicating no minors are allowed in the bar area.

Lt. Clements next explained the application of the rule in regards to privately owned club facilities versus a larger establishment, such as the Knitting Factory in Boise. He stated that the distinction is whether the facility is licensed by ABC. If they are, then the rule applies to that facility. Non-licensed facilities would apply for a catering permit for one event and in this case, minors would not be restricted.

In regards to the wording in § 04 (a)(iii)(c), **Lt. Clements** explained the rule is worded in this way in order to establish a baseline that the party applying for the permit is serving food, and it is not just a drinking establishment. A committee member commented that as the rule reads, the applying party must serve only one of the food items on the list to qualify for the permit. Lt. Clements stated that he doesn't know exactly where the verbiage for the rule originated from but the intent was not to limit food items served.

The committee questioned the "plan requirements" in § 04 (a)(iii)(d) and the five elements required to receive the multi-purpose endorsement. **Lt. Clements** explained that the type of event will dictate the clientele and needed security. If the applicant is a small operator, with a limited number of events, the entire plan will be evaluated in light of the type of events that operator is having, as well as by the events they are not having. He explained further that if a small operator hosted a limited variety of events, it would be possible for that party to send in a plan for the entire year, provided the plan for each month remained the same. What that party would be doing in actuality is submitting a plan for each month, all at one time, and if there were to be a change in events, that party could change the event with 24-hour notice to law enforcement.

In the case where an establishment such as the Hispanic Cultural Center, who doesn't qualify as a restaurant/bar but wishes to serve alcohol and also have minors in attendance, would need to have signs posted to keep the minors and alcohol separate. **Lt. Clements** explained that as it stands now, the Hispanic Cultural Center has to post "no minors" signs. This rule opens up the opportunity to have special events for all ages. He also noted that the Hispanic Commission knows about their violation and is interested in applying for multi-purpose endorsement qualification/permit. He explained that the Hispanic Commission and the Knitting Factory have been operating as "over/under" establishments for a long time, and want to have a legal way to have events/concerts where minors can be included.

Committee members clarified that the rule requires the licensee to submit a plan with types of activities they anticipate having, plus other criteria in the plan. Then each month all planned events must be submitted, with a 24 hour proviso allowing changes along the way.

Lt. Clements confirmed. The committee was also concerned with subpart 3 under § 04 (a)(iii)(d) and Lt. Clements explained that the "training provided" requirement is a cooperative agreement between the licensee, ABC and local law enforcement. The committee was still concerned about vagueness of the requirement and the likelihood that the best negotiator would receive the best deal.

Tyler Mallard, representing the Office of the Governor, stated that the Governor supports the rule as written but would be flexible on the verbiage.

Ronaldo A. Coulter, an attorney representing the Hispanic Cultural Center, said he met with **Lt. Clements** about **Docket No. 11-0501-1101** and found that it was too ambiguous, especially in regards to the foods listed in § 04 (a)(iii)(c) because the Hispanic Cultural Center would not likely be serving any of the listed foods which could, according to the language in the rule, result in denial of a permit. He then stated that the rule helps the Center because it allows them to serve alcohol at family functions and weddings. However, stated that the rules should be written in a way where those that are applying can understand the process.

Greg Marchant, representing the chief operating office at Knitting Factory Entertainment, explained he has been working with ISP for 5 years to try and come up with rules to apply to the Knitting Factory. He stated that he views the rule as a proactive way to define where the Knitting Factory fits in and would like to maintain their record of compliance.

The committee members discussed the options with the rule: they can either accept, reject, or accept with rejections of certain subsections. Then a concurrent resolution will be prepared reflecting the committee's decision. If the committee were to accept the rule, ABC could handle these various concerns in the preparation of the pending rules to come.

Dennis Stevenson, the Rules Coordinator for the Dept. of Administration, stated that this is a temporary rule. Next, the rule will be published as a pending rule and will go before the committee next year. Changes can be made before that time based on the "logical outgrowth" from application of the rule. If/when the rule is published as a proposed rule then that rule must be published in the administrative bulletin, if not, the agency can publish the rule with the changes that have been suggested throughout these committee meetings. If the rule were rejected, it would be finished. The other option is to rescind the rule, then ABC could return with another temporary rule that includes all the changes subject to approval next year. If this temporary rule is approved then it will be in effect until the next legislative session.

- MOTION:** **Rep. Shirley** made a motion to recommend acceptance of **Docket No. 11-0501-1101** with the stipulation/addendum that those who have expressed concern submit those changes to the rulemakers and ask them to incorporate those changes for the next legislative session. **Rep. Luker** stated that this motion was out of order. **Rep. Shirley** instead made a motion to recommend acceptance of **Docket No. 11-0501-1101** .
- SUBSTITUTE MOTION:** **Rep. Nielsen** made a substitute motion to reject **Docket No. 11-0501-1101**. In support of the motion, **Rep. Ellsworth** said that she wants to do it right from the beginning. **Mr. Stevenson** clarified that there is not enough time left in this legislative session to see the rule again and that the rule has been in effect since July 2011. In opposition to the substitute motion, **Rep. Jaquet** said that the rule is needed to protect minors and will support the rule with the idea that those involved in promulgating the rule will sit down and address the rule's weaknesses.
- VOTE ON THE SUBSTITUTE MOTION:** **Chairman Luker** called for a vote on the substitute motion to reject **Docket No. 11-0501-1101**.
- ROLL CALL VOTE ON THE SUBSTITUTE MOTION:** **Rep. Nielsen** requested a roll call vote on the substitute motion to reject **Docket No. 11-0501-1101**. **Motion failed by a vote of 2 AYE, 4 NAY. Voting in favor of the motion: Reps. Ellsworth and Nielsen. Voting in opposition to the motion: Chairman Luker and Reps. Shirley, Jaquet and Killen.**
- VOTE ON ORIGINAL MOTION:** **Chairman Luker** called for a vote on the original motion to approve **Docket No. 11-0501-1101**. **Motion carried by voice vote.** The rule will be recommended to the full committee for approval.
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:11 p.m.

Representative Lynn Luker
Chair

Stephanie Nemore
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 13, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1253</u>	Service by Publication, affidavit	Senator Davis
	Report from the Luker Subcommittee	Vice Chairman Luker
Docket No. <u>11-0501-1101</u>	Idaho State Police, Temporary Rule Review	
<u>H 497</u>	DNA testing, cost, conditions	Matthew Gamette, Lab Improvement Manager, ISP
<u>H 448</u>	Police, POST Fee Increases	William Flink, Division Administrator for Peace Officer Standards & Training (POST), ISP
<u>S 1232</u>	Prudent Investor Act	Robert L. Aldridge, Trust Estate Professionals, Inc.
<u>S 1233</u>	Guardians of Minors	Robert L. Aldridge

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, February 13, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims(Ingram), Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Rep. Nielsen

GUESTS: Robert L. Aldridge, Trust Estate Professionals, Inc.; Tyler Mallard, Governor's Office; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Paul Panther, AG's Office; Greg Bower, Ada County Prosecutor; Dan Chadwick, Idaho Association of Counties (IAC); Matthew Gamette, Lab Improvement Manager, Sharon Lamm, Cyndi Cunningham, Maj. Clark Rollins, Bill Flink, & Lt. Bob Clements; Idaho State Police (ISP)

Chairman Wills called the meeting to order at 1:31 p.m.

S 1253: **Senator Davis** presented **S 1253**. He stated that this bill relates to the filing of a lawsuit. He explained that when a lawsuit is filed, it is signed by the lawyer at the bottom of the petition which is called a "verified complaint." The plaintiff then serves the complaint to the defendant in accordance with the service of process rules in order for service to be valid. Typically, the summons and complaint are personally served, but if the defendant is difficult to find, the plaintiff may make service by publication. To do service by publication the Court must authorize it with an order. Idaho Code § 5-508 sets out the process to get that order. Some judges grant that order after it receives an appropriate affidavit. Others read Idaho Code § 5-508 to require a verified complaint. This bill allows a lawyer to enter an order after it considers either a supporting affidavit or verified complaint.

MOTION: **Rep. Burgoyne** made a motion to send **S 1253** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

Chairman Wills turned the gavel over to **Vice Chairman Luker**.

DOCKET NO. 11-0501-1101: **Vice Chairman Luker** stated that the subcommittee on **Docket No. 11-0501-1101** felt the rule could be improved, but needed it to be in place.

MOTION: **Vice Chairman Luker** made a motion to approve **Docket No. 11-0501-1101**. He clarified that, if the rule is rejected, the rule would disappear at the end of the Legislative term and, if it were approved it would come before the committee next year as a pending rule. Also, several industry members stated that having this rule would be better than not having one.

VOTE ON THE MOTION: **Motion was carried by voice vote. Reps. Sims(Ingram), Hart and Ellsworth** requested to be recorded as having voted **NAY**.

Vice Chairman Luker turned the gavel over to **Chairman Wills**.

H 497: **Matthew Gamette**, Lab Improvement Manager at ISP, presented **H 497**. He stated the purpose of this bill is to ensure the ISP lab would not be required to pay to outsource DNA testing not currently offered by the ISP lab. The current test method allows ISP to enter data into the DNA database and he believes that all DNA tests offered by ISP answer the probative questions.

Mr. Gamette next explained the procedure for DNA test orders: Before the trial, if tests not offered by the state lab are requested, it is the responsibility of the petitioner (the prosecution or defense) to send (and pay for) specialty tests at a private lab. The state lab does not pay for or outsource these tests. The defense, prosecutor, or other court officer performs this private lab testing at their own expense. The amendment to Idaho Code § 19-4902 sets up the post-conviction tests to be performed in the same manner as the "pre-trial" tests. He stated that ISP is not trying to amend legislation to save money it currently spends. He believes the legislative intent was not for ISP to cover the cost of outsourced DNA tests. ISP does not have the funding to attain accreditation to perform additional DNA test methods, especially because an immediate need for additional methods is not present at this time.

In response to committee questions, **Mr. Gamette** said the bill contains an emergency clause because the ISP lab felt this to be an emerging issue, that ISP will be asked to perform this type of testing in the near future and assumes this is the beginning of a trend. In regards to the baseline of tests offered, he said that ISP is accredited to international DNA test standards and stays current with FBI quality assurance standards. Also, he said that the ISP lab is not currently exploring any partnerships with higher education institutions.

Mr. Gamette clarified that all tests should be performed in an accredited and quality assured laboratory, which is also what any judge would require. In regards to the types of tests that are not offered by the ISP lab, he deferred to **Cindy Cunningham**, ISP. She said that the ISP lab offers "STR" testing, which is the primary type used in the forensic community. The STR test identifies all persons except for identical twins. Non-offered testing includes: "YSTR" testing, which is specific only to males because this DNA is found only on the Y chromosome, but it is not unique to a single male and rather follows only familial lines. In 2011 the ISP lab had 5 cases submit a request for YSTR testing and ISP is gathering statistics to determine the caseload.

MOTION:

Rep. Bateman made a motion to send **H 497** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Hart** will sponsor the bill on the floor.

H 448:

William Flink, Division Administrator for Peace Officer Standards & Training (POST), ISP, presented **H 448**. He explained that POST is responsible for minimum training standards for peace officers in Idaho. ISP needs to provide training that will produce properly educated and trained personnel that will enable ISP to effectively protect public safety. The POST revenue increase does not impact the general fund and will place a burden only on those who have committed a crime. Further, he stated that there exists a need to replace training equipment and maintain POST's office of professional responsibility. This funding should satisfy POST's funding needs until 2017.

In regards to the declining trend in collected fees, **Mr. Flink** stated that in 2009 there were 294,000 citations, in 2011 227,000 fines, and this year, 211,000 fines are expected. He posited the decrease could be because people are violating the law less due to the economic downturn. Other possible reasons for a decrease in revenue are: departments are using fewer traffic officers due to budget cuts, methods of fee collection, plea bargains and traffic safety education programs offered in lieu of fine payment. Mr. Flink clarified that the 83,000 reduction in fine generated revenue is a decrease in the number of fines issued from 2009 until this year (anticipated fines at the current rate of decreasing revenue). Also, the breakdown of fee collection rates in 2011 is: felonies were 48%, 72% misdemeanors and 95% infractions. Mr. Flink then explained POST has 3 sources of funding and the current \$10.00 fee is the largest. The goal is to bring revenue back to the 2009 level. The \$500,000 reserve is what POST needs to have in its

budget as directed by the Governor's Office to ensure there is enough money to begin the next fiscal year. In the past 2 years, POST has only had \$50,000 reserve in the budget and ISP had to assist.

In regards to training costs/methods, **Mr. Flink** said the \$10.00 fee pays for the basic and foundational training. It does not pay for continuing education of any police officer. He explained that POST pays the entire cost of the 10 week training program. POST has decided not to require those in training to pay because these are often smaller agencies who cannot afford the \$10,000.00/person training cost.

The original proposal of \$1.50 increase was thought to be enough to place POST near the 2009 funding level, but POST later realized that an increase to \$5.00 was needed because they did not anticipate the decline in revenues to happen as quickly as it did. He explained that \$5.00 increase would help POST stabilize for a few years and doesn't believe it would be wise to accept a lesser amount.

MOTION: **Rep. Burgoyne** made a motion to send **H 448** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Ellsworth** requested to be recorded as having voted **NAY**. **Reps. McMillan** and **Bolz** will sponsor the bill on the floor.

S 1232: **Robert Aldridge**, an attorney with Trust Estate Professionals of Idaho (TEPI), presented **S 1232**. He said this a "clean up" bill and the purpose is to clarify a portion of the conservatorship statute. This bill amends 68-514, part of the Uniform Prudent Investor Act, to properly refer to conservators. The original enactment of this section used the general term "guardian", which in some states, but not in Idaho, refers to both guardians and conservators. In almost all cases, conservators, not guardians, are the fiduciaries handling the financial affairs of the protected person. The term "guardian" is kept because in some cases guardians will actually handle funds for the ward, for example as a representative payee for social security payments. He also stated that this change will give clear guidance to courts, conservators, and guardian ad litem.

MOTION: **Rep. Killen** made a motion to send **S 1232** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.

S 1233: **Robert Aldridge**, TEPI, presented **S 1233**. He explained that the purpose of this bill was to create a provision in guardianship law that defines the requirements for termination of guardianship of a minor. Currently, under the probate code, there is nothing that addresses this issue. However, under the Child Protective Act (CPA), there are clear guidelines and the bill contains the standards set out in section 2, subparagraphs 4 and 5 of the CPA. The standard of review is "clear and convincing." Mr. Aldridge believes this will be a clear guideline, and there is support from the courts and family law attorneys for this bill.

In response to committee questions about setting up a guardianship, **Mr. Aldridge** said that a party adverse to the parents, the standard of review is heightened to "preponderance of the evidence." This is a higher standard because self-assessment is poor, and to make a major change there should be a higher standard in place. Also, this is the standard that is currently being applied, so essentially the law is just catching up to what is already being done in court. Mr. Aldridge clarified that the Idaho Supreme Court held in the Hernandez case that once you get out of the fit-parent situation, parental deference is no longer due.

MOTION: **Rep. Jaquet** made a motion to send **S 1233** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Perry** requested to be recorded as having voted **NAY**. **Rep. Luker** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:39 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 15, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>H 531</u>	Motor vehicle title transfer fees	Dawn Peck, Manager of Bureau of Criminal Investigation, ISP
<u>RS21304</u>	Motor Vehicle title transfer fees	Dawn Peck, ISP
<u>H 403</u>	Abandoned motor vehicle/tow list	Lt. Col. Ralph Powell, Deputy Director, ISP Dawn Peck, ISP
<u>H 532</u>	Peace Officer Standards & Training; Fee Collection for use of POST dormitories/facilities	Sharon Lamm, Business Operations Manager, Peace Office Standards & Training (POST)/ISP
<u>S 1265</u>	Execution, Death Warrant Return	Brent Reinke, Director of Idaho Dept. of Corrections
<u>S 1266</u>	Stay of Execution	Brent Reinke

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 15, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Rep. Ellsworth

GUESTS: Randy Colson, Idaho Towing and Recovery Professionals; Woody Richards, Attorney/Lobbyist; Lamont Anderson, Attorney General's Office; Lt. Col. Ralph Powell & Sharon Lamm, POST, Idaho State Police (ISP)

Chairman Wills called the meeting to order at 1:33 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the February 7, 2012 meeting. **Motion was carried by voice vote.**

Chairman Wills recognized **Drew Nelson**, House Page, for her service during the first half of this session.

H 531: **Dawn Peck**, Manager of the Bureau of Criminal Investigation, ISP, presented **H 531**. She said that after further review by the agency, the language in the bill contained errors and fell short of the statutory goal and ISP would like to pull the bill and introduce a replacement RS.

**UNANIMOUS
CONSENT
REQUEST:** **Rep. Killen** requested unanimous consent to pull **H 531**. There being no objection, consent was granted.

RS 21304: **Dawn Peck**, ISP, presented **RS 21304**. She explained that **RS 21304** will replace **H 531** because the language in **H 531** was confusing and inadequate to accomplish the ISP's goal for the bill. The only change is to § 49-202 (2)(q), to the word "transfer," clarifying that this is a one time fee for vehicle title transfer that will be used to support the Idaho Public Safety and Security Information System (more commonly known as "ILETS"). This proposed legislation proposes to establish a fee on the issuance or transfer of each vehicle title which will provide a stable funding source to support and maintain ILETS. ILETS primary mission is to provide a dedicated, secure, reliable, high-speed communications system that enables the public safety and criminal justice communities to fulfill their missions of protecting and serving Idaho citizens. The ILETS Board has recognized that the current funding structure is inadequate to sustain daily operations and infrastructure need and monies earned from this fee would go into an ILETS dedicated fund to be used for ILETS maintenance and usage costs.

In response to committee questions, **Ms. Peck** stated that total annual funds earned from this fee collection would be about \$4 million. Yearly cost to keep the system running is about \$2.7 million/year. She clarified that there would be an excess, but the Board is trying to build the fund to be able to pay for a replacement part if/when it is needed and to make sure that they do not have to ask for increased funding for ILETS in the near future for this purpose. Committee members requested a list of all the fees involved with this.

Ms. Peck stated that a fee is assessed when any title transfer is made, even if the vehicle was a gift. Also, on page 6, line 41, "all access fees collected under the provision of this chapter," she said that these fees are outlined in IDAPA 480. The access and system usage fees were raised in 2007 to an amount counties felt they could absorb. The Board feels this is not enough to maintain the system, and currently ISP is covering 48% of the costs, where they should be covering 25%.

Amy Smith, a Vehicle Services Manager for the Idaho Dept. of Transportation (IDT), explained the breakdown of the title fee. The committee expressed concern about the fees listed on the first two pages of the RS and questioned where the fees, other than to ILETs, were going to be distributed. **Ms. Peck** stated that the Idaho Code section that has been changed is the IDT title section, it is not for the ILETs system.

Rep. Sims invoked **Rule 38** stating a possible conflict of interest as she is an automobile dealer, but will be voting on **RS 21304**.

MOTION:

Rep. Smith made a motion to introduce **RS 21304**.

Ms. Peck stated that she will advise the Department of Transportation (DOT) Advisory Board about the substance of the bill. In regards to the "other vehicles" listed on page 2, **Ms. Smith** said that this could be a boat or trailer, technically not a motorized vehicle. In regards to the language she stated that this is just left over language, as all these "other" vehicles would be included here, so the "other" is likely unnecessary.

VOTE ON THE MOTION:

Motion was carried by voice vote.

H 403:

Lt. Col. Ralph Powell, ISP, presented **H 403**. He explained the purpose of this bill is to create a requirement for tow truck drivers who contract with the ISP to have criminal background checks through both the FBI and Idaho criminal databases. There is a public expectation that the tow truck driver has gone through some kind of background check, and ISP would like to send a tow truck driver that does not have a criminal record that includes any of the disqualifying crimes. The intent is to make this process safer for those who are having their cars towed, under the direction of the ISP.

In response to committee questions, **Lt. Col. Powell** stated that ISP is interested in crimes committed against persons and serious property crimes when examining someone's background. For example: battery, burglary, rape, etc. He explained ISP is adding the federal review to the state check that is already being used. He emphasized that it is a more comprehensive check because it is nationwide, not just for the state of Idaho. In regards to the doubling of the fees to tow truck drivers, he said the addition is the cost of using the FBI fingerprint-based check.

Lt. Col. Powell explained the payment for the background check would not apply to every employee of the tow-truck company, but would apply only to the owner and all drivers that will be responding to the scene. **Lt. Col. Powell** deferred to **Dawn Peck**, ISP, for a question about the fee increase, which was authorized to \$25.00 for the fingerprint based check (increased from \$10.00). She stated that the fingerprint based check is important because it is a positive identification. Total fees would be about \$41 for each responding tow-truck driver.

In regards to the ability of the state to use the substance of the FBI background checks, **Lt. Col. Powell** said that the authority to conduct a state background check is governed by FBI rules and there must be a statute that authorizes ISP's use of the FBI database. He deferred to **Ms. Peck**, and she said Title 67, Chapter 30 governs authority to do state background checks.

Randy Colson, President of the Idaho Towing Recovery Professionals, stated his concern is with the timing of the fees required. He said he would like the fee application to happen at the time of hire. He also said there is no standard of measure to apply this to and there needs to be a requirement in writing. He emphasized that they are seeking a measured guideline so that tow truck companies are able to comply.

In response to committee questions, **Mr. Colson** stated that the AAA background checks do not have access to the FBI database. He said that he would be satisfied with at least one check through the FBI based system, though it is not possible to transfer federal information, and AAA can verify that the check was completed. In regards to the City of Boise evaluation, the check is annual, meaning that any crimes for the next 12-month period would be undiscovered. He emphasized that he, as a business owner, is paying attention to the quality of his employees.

When asked if the City of Boise would be willing to accept the background check from ISP and not require an additional check, **Lt. Col. Powell** said the ISP check is completed once at the time of hire, however, Boise City requires annual checks and he does not know what they might be willing to accept in the future. In regards to timing of the background check, there isn't a particular time in mind and this bill stems from a particular incident in Oregon, where a tow truck driver used by the ISP that had various convictions in Oregon, which were not detected in the Idaho database search.

In regards to committee concerns over whether this is an ongoing problem, **Lt. Col. Powell** stated the national background check provides a comprehensive criminal check and ISP has no current intention of changing the policy to include itemized specifics as far as "disqualifying crimes" go. Also, the ISP procedure on tow truck operators does not spell out the specific qualifications and ISP conducts a case-by-case analysis when they conduct a background check. The committee expressed a concern that there are no qualifications codified somewhere. **Lt. Col. Powell** stated that if the applicant is denied approval, they have the opportunity to meet with ISP to redress their concerns. He added that tow-truck drivers do not have to be on the rotation list used by ISP.

When questioned, **Mr. Colson** stated that he was not involved in drafting this bill. In regards to suggested changes to the bill, he would like the background check to be conducted at the time of application to the ISP tow truck pool, and he would like to see clarification on timing and definitions of disqualifying crimes.

MOTION:

Rep. Killen made a motion to send **H 403** to the floor with a **DO PASS** recommendation. **In favor** of the motion, **Rep. Luker** made a request to add various standards to this, but overall he supports the bill due to public safety concerns. **Rep. Perry** stated **in opposition** to the motion, she is likely not to support the bill because of the fear that certain drivers will be excluded, the high cost, lack of standards, and lack of strict time frames for check requirements.

**SUBSTITUTE
MOTION:**

Rep. Bateman made a substitute motion to hold **H 403** in committee. In support of the motion he stated that Idaho is a small state and these fees and other issues are of great concern to Idaho's citizens.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Hart made an amended substitute motion to hold **H 403** in committee for a time certain, no longer than one week, for parties to get together and come up with better language.

**ROLL CALL
VOTE ON THE
AMENDED
SUBSTITUTE
MOTION:**

Chairman Wills requested a roll call vote on the amended substitute motion to hold **H 403** in committee for a time certain. **Motion passed by a vote of 8 AYE, 6 NAY and 1 absent/excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Smith(24), Nielsen, Shirley, Hart, Bolz, McMillan, and Perry. Voting in opposition to the motion: Chairman Wills, Reps. Bateman, Sims(Ingram), Burgoyne, Jaquet, and Killen. Rep. Ellsworth was absent/excused.**

H 403 will come before the committee on Thursday, February 23, 2012.

H 532:

Sharon Lamm, POST/ISP, presented **H 532**. She stated this will amend Idaho Code to allow POST counsel to collect and spend fees earned from POST dormitory usage. The fees are structured to recoup costs associated with use of training equipment from non-law enforcement institutions. POST academy rooms are available to non-POST entities. POST charges \$10.00/night/room which benefits POST and saves lodging costs for those who are using the room.

Ms. Lamm next provided responses to committee concerns from the RS hearing. She said that in regards to concern about exemptions from the bed tax, all charges for room occupancy that are exempt from sales tax, are exempt from the room tax. Over 99% of POST customers receive the tax exemption and the remaining customers are from out-of-state. In 2011, POST collected \$32,000 in dormitory fees. She emphasized that law enforcement agencies throughout the state benefit from the use of the facility for the training they are required to complete in order to retain their certifications. In FY2011 POST collected \$80,000 from POST-associated users and without this charge in place, POST would have to bill these agencies about \$20,000 annually for their usage.

MOTION:

Rep. Shirley made a motion to send **H 532** to the floor with a **DO PASS** recommendation.

In regards to an audit on the taxes being taken out, **Ms. Lamm** stated POST has been audited in the past. The committee was concerned that a law enforcement agency has been doing something they are not yet authorized to do, she said that this is one of the areas that needed to be addressed.

**VOTE ON THE
MOTION:**

Motion was carried by voice vote. Rep. Shirley will sponsor the bill on the floor.

S 1265:

Brent Reinke, Director of the Idaho Dept. of Corrections (IDC), presented **S 1265**. He handed out copies of IDC's standard operating procedures. He explained the lessons learned from the November 18, 2011 execution which was the first in many years. **S 1265** addresses pre- and post- execution procedure. The purpose of the bill is to clarify that after the execution the death warrant is to return to the district court, which is consistent with the statute.

MOTION:

Rep. Nielsen made a motion to send **S 1265** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. Nielsen** will sponsor the bill on the floor.

S 1266:

Lamont Anderson, Attorney General and Chief of the Capital Litigation Unit, presented **S 1266**. He said this bill addresses "how" and "when" a warrant of execution is obtained. It clarifies that the state of Idaho, the Idaho Supreme Court, and Federal Courts can impose a stay of execution. Section 2 addresses procedure for obtaining the death warrant, which occurs after unitary review by the Idaho Supreme Court. Remittitur is executed by the Idaho Supreme Court, but the word "prosecutor" has been changed to the "state." He explained that after a death warrant is obtained, death sentence inmates are reviewed by federal courts. If a stay is obtained, then a mandate is issued by the 9th Circuit Court of Appeals. After this, it is possible to get a second death warrant. There also may be a situation where the Dept. of Corrections has not been able to complete an execution by the time allotted by the court. In this case, the bill allows the department to obtain another warrant from the district judge with an explanation of why the execution has not been completed. This prevents a death sentence inmate from skirting the death sentence because of a timing issue.

In response to committee questions, **Mr. Anderson** said § 4, line 35, changed from "must" to "may" because the death sentenced inmate is not actually brought into court. In the case that the district court wants to inquire why that warrant was not carried out, this change removes the requirement that the inmate has to be present during this inquiry. In regards to whether a judge would want to make an inquiry, he clarified that the judge must make an inquiry and stated it would be hard to imagine a situation where the district judge would not want to sign an additional death warrant. In regards to the timing of the issuance of the death warrant, he said constitutional speedy trial requirements would govern this. Regarding line 37, the "special specified time," Mr. Anderson stated that this is prior language from the statute and means the warden shall execute the death warrant as specified by the district judge.

MOTION:

Rep. Perry made a motion to send **S 1266** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:23 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 p.m. or Upon Adjournment
Room EW42
Tuesday, February 21, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1263</u>	Victim Notification Fund (VINE)	Michael J. Kane
<u>S 1214</u>	State Bar/License Fees	Michael Henderson, Legal Counsel for the Idaho Supreme Court
<u>S 1272</u>	Telegraphs, arrest warrants	Michael Henderson

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Bateman
Vice Chairman Luker	Rep McMillan
Rep Smith(24)	Rep Perry
Rep Nielsen	Rep Sims
Rep Shirley	Rep Burgoyne
Rep Hart	Rep Jaquet
Rep Bolz	Rep Killen
Rep Ellsworth	

COMMITTEE SECRETARY

Stephanie Nemore
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 21, 2012

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Chairman Wills and Rep. Nielsen

GUESTS: Olivia Craven, Parole Commission; Kim Luacer, Kristin Contreras, Abigail Nickel & Devan Hunt, Advocates Against Family Violence (AAFV); Anne Chatfield, Luann Dettman & Sally Alvarado, Idaho Council on Domestic Violence; Mike Kane, Idaho Sheriff's Association (ISA); Terri Wedding, Appriss; Joel Teuber, Fraternal Order of Police; Laurie Nolan, Ada County Prosecutor; Vaughn Killeen, Sheriff's Association; Chris Smith & Aleshea Lind-Buals, Canyon County Sheriff; George Gutierrez, Crime Victims Compensation Bureau; Michael Henderson, Idaho Supreme Court; Holly Koole, Idaho Prosecuting Attorney's Association; Bill Flink, Peace Officer Standards & Training (POST), Idaho State Police (ISP)

Vice Chairman Luker called the meeting to order at 2:51 p.m.

Vice Chairman Luker introduced **Courtney Wills**, the incoming House Page, and welcomed her to the committee.

MOTION: **Rep. Killen** made a motion to approve the minutes of the subcommittee meeting held on February 9, 2012. **Motion was carried by voice vote of the subcommittee members.**

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 9, 2012 committee meeting. **Motion was carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 13, 2012 committee meeting. **Motion was carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 15, 2012 committee meeting. **Motion was carried by voice vote.**

S 1263: **Michael J. Kane**, who represents the Idaho Sheriff's Association (ISA), presented **S 1263**. He stated that this bill has strong support from various law enforcement and domestic violence agencies. He explained that in the past, when a crime victim wanted notification of the offender's release from prison, the victim would have to go to a prosecutor and request notification and then the information was disseminated to the victim. This was an inefficient process and, as a result, the electronic victim and witness notification system (known as VINE) was created. Idaho has used VINE for about 10 years. The federal grants used to support the system are running out, and this bill seeks sustainable funding to support VINE. The bill asks for a one-time \$10.00 conviction fee of a misdemeanor or felony. Any excess funds at the end of the fiscal year will go to the Victim Restitution Fund. In closing, he said VINE is used by concerned families, the Department of Health and Welfare, the Social Security Administration, and other law enforcement agencies.

MOTION: **Rep. Ellsworth** made a motion to send **S 1263** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

S 1214: **Michael Henderson**, legal counsel for the Idaho Supreme Court (ISC), presented **S 1214**. He explained that this bill makes several technical changes to Idaho Code § 3-409 with the purpose of making the statute consistent with Idaho State Bar rules. The terminology changes are: 1) the category of bar members that have been admitted but are not actually practicing were formerly "affiliate" and are now renamed "inactive" members. 2) Members that are at least 72 years old, are inactive, and pay a \$70.00 fee, will be in a separate membership category called "senior members."

MOTION: **Rep. Burgoyne** made a motion to send **S 1214** to the floor with a **DO PASS** recommendation.

Rep. Killen invoked Rule 38 stating a possible conflict of interest as he is a member of the Idaho State Bar and over the age of 72, but will be voting on the bill.

In response to committee questions, **Mr. Henderson** stated that section c, could have been listed as a "(b)(3)" but these categories are actually listed in the Bar rules, not in the statute. The committee voiced a concern that section c seems to include both active and inactive senior members and wanted to know whether the rules are in compliance with the statute. Also, there is not an "affiliate category" for Bar-membership for those who have attended law school but have not yet passed the Bar.

VOTE ON THE MOTION: **Motion was carried by voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

S 1272: **Michael Henderson**, ISC, presented **S 1272**. He said there are many references to telegraphs in the Idaho Code, and this bill amends or repeals these obsolete references. For example, regarding delivery of arrest warrants, the bill will amend I.C. § 19-616, allowing arrest warrants to be sent via fax or telecommunication. The bill would also repeal I.C. § 19-617, requiring officers to follow certain procedures when sending telegraphic copies of warrants; I.C. § 62-414 requiring railway corporations to send telegraphic notification of late arrival of passenger trains; I.C. § 62-415, requiring the posting of such notifications in stations or waiting rooms; I.C. § 62-416, failure to post these notices results in a misdemeanor; and I.C. § 62-417, which makes it a misdemeanor for a railway company to violate any of the three preceding sections.

In response to committee questions, **Mr. Henderson** said "telecommunication" is not defined in code nor in Idaho criminal rules, but according to the various definitions he searched, seemed to include any form of electronic communication, which includes email, texting, etc.

MOTION: **Rep. Jaquet** made a motion to send **S 1272** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. McMillan** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:19 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #3 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 p.m. or Upon Adjournment
Room EW42
Thursday, February 23, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>H 514</u>	Disturbing the Peace	Rep. Nonini
<u>H 403</u>	Abandoned Motor Vehicles/tow list	Lt. Col. Ralph Powell, ISP
<u>S 1215</u>	Contraband within correctional setting	Brent Reinke, Director of the Idaho Dept. of Corrections
<u>S 1292</u>	Executions, practice of medicine	Brent Reinke

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
Phone: (208) 332-1127
email: snemore@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 23, 2012
TIME: 1:30 p.m. or Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
ABSENT/EXCUSED: Rep. Smith(24)
GUESTS: Randy Colson, President of Idaho Towing and Recovery Pros; Tim Higgins & Brent Reinke; Idaho Dept. of Corrections (IDOC); Fairy Hitchcock, Hitchcock Family Advocates; Mike Kane, Idaho Sheriff's Association (ISA); Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Mark Kubinski, Idaho Dept. of Corrections/Attorney General's Office; Lt. Col. Ralph Powell & Dawn Peck, Idaho State Police (ISP)

Chairman Wills called the meeting to order at 2:47 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 21, 2012 meeting. **Motion was carried by voice vote.**

UNANIMOUS CONSENT REQUEST: **Chairman Wills** requested unanimous consent to **HOLD S 1263** in committee. He explained this is the former "VINE" bill and because it is a fee bill, it needs to begin in the House. The new RS will be introduced in the Ways and Means Committee and then will be referred to our committee. There being no objection, consent was granted.

H 514: **Rep. Nonini** presented **H 514**. He said the bill was changed at the RS stage at the request of this committee, and the new language reflects those changes. He explained that originally he wanted to amend the stalking statute. This bill will amend the Disturbing the Peace statute, Idaho Code § 18-6409, a misdemeanor offense. Additionally, he stated that the Idaho Prosecuting Attorneys Association (IPAA) and the Idaho Sheriff's Association (ISA) support this legislation.

MOTION: **Rep. Nielsen** made a motion to send **H 514** to the floor with a **DO PASS** recommendation.

Fairy Hitchcock, representing Hitchcock Family Advocates, spoke in opposition to the bill. She brought five handouts which outlined her criminal history. She explained that the Idaho State Repository System (ISTARS) can be incorrect and the court clerks are unwilling to change or update it. Even though she received a withheld judgment, a dismissal, and an acquittal for various charges, all of these charges still appear when her name is searched in ISTARS. She urged the committee not to send **H 514** to the house floor.

In response to committee questions, **Ms. Hitchcock** stated that criminal charges never seem to be truly expunged. The charge "goes into hiding," but doesn't go away. Even if you have the case closed, it is still visible.

Holly Koole, IPAA, explained and clarified there is no expungement mechanism in the Idaho statutes. If you receive a withheld judgment, you can tell an employer this, but it never goes off the record. She indicated that there are some circumstances where records can be expunged. Expungement rules for juveniles are different, and their records cannot be released.

In regards to the definition of "emotional distress," in the bill, **Ms. Koole** explained this is the definition taken from the stalking statute. It may also be defined in a criminal jury instruction. She then explained that the proposed additional language to the Disturbing the Peace statute is necessary because there have been fact patterns in the past that have not fit the first part of the statute, and the language that we currently have doesn't cover all possible scenarios. She confirmed that the added verbiage may be used in instances of bullying, though there is a specific statute for this purpose, and there is case law that states you must charge under the most specific statute.

Rep. Nonini explained that he had constituents that have had an ongoing problem with a harassing neighbor and under the current code, they have no recourse.

VOTE ON THE MOTION:

Motion was carried by voice vote. Rep. Bateman will sponsor the bill on the floor.

H 403:

Lt. Col. Ralph Powell, ISP, presented **H 403**. He explained that an agreement was struck between the towing industry and the ISP. He said this bill is designed to ensure the safety of Idaho's citizens and ensure that when ISP sends a tow truck, those who are involved with that tow truck will be safe.

In response to committee questions, **Lt. Col. Powell** clarified that the agreement with tow truck operators will be found within ISP procedure. He outlined incidents with tow truck operators throughout the state: 1) Coeur d' Alene: stolen ipod, 2) Boise area: registered sex offender, 3) Treasure Valley: intoxicated driver, 4) Region 4: property stolen from the towed vehicle, 5) District 5: took new tires, sold them and replaced with old tires & registered sex offender. He said these people will be prevented from responding to ISP tow truck calls, but will not be prevented from working as a tow truck driver. Next, he explained that currently there is a positive working relationship between ISP and tow truck operators around the state of Idaho.

Lt. Col. Powell distributed the ISP procedure handout that contains the list of disqualifying criminal convictions (those convictions that will prevent a tow truck operator from qualifying for the ISP list). He said he is unaware of the percentage of tow truck companies used by ISP as compared to total available tow truck companies in Idaho. Abandoned vehicles are included in the statute because tow truck companies are often called upon by ISP for removal of these vehicles.

The committee commented about the use of the word "may," on line 22, and stated that, as it is written, it will mean that the police will have the option to use either the Idaho or Federal database, but are not mandated to use both. Further discussion confirmed that the chosen verbiage likely won't make a difference and the purpose is to allow ISP to perform these background checks. **Dawn Peck**, Bureau of Criminal Identification, confirmed that the language gives ISP the authority to receive the background information from the FBI. **Lt. Col. Powell** explained that even if a driver is disqualified, the entire company is not disqualified; the procedure only addresses the requirements for the responding drivers.

Randy Colson, President of the Idaho State Towing Association, said the association met with **Col. Powell** and are satisfied with the bill. They believe this legislation will benefit the industry as a whole.

MOTION:

Rep. Hart made a motion to send **H 403** to the floor with a **DO PASS** recommendation.

In opposition to the motion, **Rep. Bateman** stated a concern with the fee increase and a one-time check seems to be ineffective. In support of the motion, **Chairman Wills** agreed with these sentiments, but from his own experience, has seen many broken down cars far from civilization and there is a need to provide security for these people. In support of the motion, **Rep. Burgoyne** recognized the distinction between a private consumer who checks the background of service people they hire versus the citizen who is broken down, far from any town. When ISP calls a tow truck, ISP is endorsing the operator and guaranteeing that you will be safe while with the tow truck driver.

VOTE ON THE MOTION:

Motion was carried by voice vote. **Rep. Bateman** requested to be recorded as having voted **NAY**. **Rep. Hart** will sponsor the bill on the floor.

S 1215A:

Brent Reinke, Director of IDOC, presented **S 1215a**. He showed the committee a case containing examples of contraband in Idaho State Prisons.

Mark Higgins, IDOC, said the purpose of this bill is to create safer facilities and make it harder for inmates to obtain and possess contraband in prison. He explained that this bill updates various contraband definitions. Specifically, the new definitions include cell phones, which are often involved in drug trafficking activities from inside prison. The bill creates three categories of punishment: 1) Nuisance Contraband (infraction), 2) Simple Contraband (misdemeanor offense) which are items that cause danger to the facility such as money or tattoo equipment, and 3) Major Contraband (felony offense) which are items that cause a major danger to the safety of a facility, such as controlled substances, tobacco, and escape aids. He explained tobacco is major contraband because of the danger created by the huge profits that are made in the trafficking of tobacco.

MOTION:

Rep. Burgoyne made a motion to send **S 1215a** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

S 1292:

Brent Reinke, IDOC, presented **S 1292**. He explained this is the third piece of execution legislation, and it addresses the acquisition of chemicals for an execution.

Mark Kubinski, the Deputy Attorney General for IDOC, said in light of the recent execution, IDOC determined a need for new statutory language. The new section is as follows: 1) subsection 1, clarifies carrying out an execution does not qualify as the "practice of medicine," 2) subsection 2, any authorized entity that distributes substances used in executions shall be able to distribute those substances to the director for the execution and shall not be subject to liability for the death of the condemned person. 3) IDOC staff is exempt from legal ramifications associated with using these drugs to carry out an execution.

In response to committee questions, **Mr. Kubinski** said this legislation should protect employees of IDOC from any opposition.

MOTION:

Rep. Nielsen made a motion to send **S 1292** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Luker** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:47 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Wednesday, February 29, 2012

SUBJECT	DESCRIPTION	PRESENTER
SCR 122	State police, rules rejected	Vice Chairman Luker
S 1324	Attorney's Fees	Sen. Corder
H 595	Victim Notification Fund (VINE)	Michael J. Kane
S 1233	Guardians of Minors	Robert L. Aldridge

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Reps. Burgoyne and Ellsworth

GUESTS: Michael J. Kane, Idaho Sheriff's Association (ISA) & Appriss; Robert L. Aldridge, Trust Estate Professionals, Inc.; Olivia Craven & Molly Vaughn, Parole Commission; George Guitierrez, Crime Victims Compensation Program; Devan Hunt, Advocates Against Family Violence; Laurie Nolan, Ada County Prosecutor's Office; Kurt Holzer, Idaho Trial Lawyer's Association (ITLA); Woody Richards, Attorney/Lobbyist; Vaughn Killeen, Idaho Sheriff's Association; Kent Day, Liberty Mutual; Paul Jagosh, Idaho Fraternal Order of Police, Jerry Russell & Bill Flink, Idaho State Police (ISP); Angela Richards, Richards Law Office

Chairman Wills called the meeting to order at 2:37 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the February 23, 2012 meeting. **Motion was carried by voice vote.**

SCR 122: **Vice Chairman Luker** presented **SCR 122**. He stated that this is the concurrent resolution rejecting subsections 91 and 92 of the POST pending rules.

MOTION: **Rep. Killen** made a motion to send **SCR 122** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.**

S 1324: **Sen. Corder** presented **S 1324**. He said there is a duty to provide access to government for all people, which includes access to the courts. This bill makes an inflationary adjustment to Idaho Code § 12-120(1). This section of Idaho code grants attorney's fees to the prevailing party of a civil action and has not been adjusted since the current \$25,000 was adopted in 1986. Based on inflation, that figure should now be \$51,000 and the \$35,000 proposal brings us to 1995 inflationary rates. This amount is appropriate because it will provide people with a reasonable expectation that they will receive attorney's fees if their claim is justified. He explained that the amount of a claim can rise as a case progresses and under the current statute, the claimant would have to reduce their claim to have a reasonable expectation of fees. Also, if their offer is within 95% of the ultimate award or if both parties are acting reasonably, no attorney's fees may be awarded.

MOTION: **Rep. Killen** made a motion to send **S 1324** to the floor. **Motion was carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.

H 595: **Michael J. Kane** presented **H 595**. He explained this bill, formerly **S 1263**, passed unanimously last week and **H 595** is a replica of **S 1263**, but needs to begin in the House because it is a fee bill. This bill is supported by the Idaho Association of Counties, state prosecutors, Domestic Violence council, Mothers Against Drunk Driving (MADD), and Advocates Against Family Violence. The Victim Notification System (VINE) allows for real time notification to victims when there is a change in status of offenders. This bill proposes a \$10.00 fee upon conviction of a misdemeanor or felony. Any excess funds at the end of the fiscal year will go to the Victim Restitution Fund.

In response to committee questions, **Mr. Kane** explained that misdemeanors and felonies are being increased by the same amount because they didn't want to overburden felony offenders as they already pay a considerable amount more than the misdemeanor offender. Additionally, the Victims Rights Amendment mandates that the offender pay restitution to the victim.

VOTE ON THE MOTION:

Motion was carried by voice vote. Chairman Wills and Vice Chairman Luker will sponsor the bill on the floor.

S 1233:

Robert L. Aldridge presented **S 1233**. He said the foundation of the bill is two-fold. He explained that the creation of the guardianship was established in 1972 under the Uniform Probate Code in Idaho, however, guardianship termination is less clear. This bill amends Idaho Code § 15-5-210 and § 15-2-212 to add the provision in existing in § 15-5-212A, enacted in 2007. He said there is a tendency for those who are seeking reappointment as a guardian to be poor at self-assessment and in reality remain unfit. The purpose of this bill is to require a high-standard for overturning a stable guardianship. The "clear and convincing" standard of proof would require the movant to show a substantial change in circumstances in order to begin the process of guardianship of their child/children. All parties in support of this bill are in favor of using the "clear and convincing" standard of review.

In response to committee questions, **Mr. Aldridge** said that if the "clear and convincing" standard were to change, it would overburden the courts because courts have seen a huge increase in parents returning to court trying to seek guardianship of their children. **Mr. Aldridge** stated **S 1233** is supported by Trust Estate Professionals Inc. (TEPI), representatives from a large number of stakeholders, and family law sections and he can bring documentation of their support if the committee requests it. In regards to the different types of guardians, he said these are most often close family members such as grandparents and aunts/uncles. A guardian may also be a sibling or non-family member.

MOTION:

Rep. Perry made a motion to hold **S 1233** in committee.

Mr. Aldridge stated that the modification of the purpose of the co-guardian provision (§ 5, subpart a) is to prevent re-litigation of the same question, therefore, there needs to be a material change of the co-guardian's circumstances allowing the court to reexamine the guardianship. In regards to the "clear and convincing evidence" standard of review, **Mr. Aldridge** said there is no standard of review under the existing probate code. The courts have been using the language out of § 212A as the standard, this bill will codify current practice.

Mr. Aldridge next explained the difference between a guardian ad litem and a guardian. Under the probate code, a guardian ad litem is an attorney appointed to represent the ward, makes decisions for the ward, and must continually monitor the guardianship.

Vice Chairman Luker commented about the burden of proof and "substantial and material change." He said a guardianship is not established by a "clear and convincing" standard, which is a much higher standard than "preponderance of the evidence." A guardianship should be established and dissolved by the same standard.

SUBSTITUTE MOTION:

Vice Chairman Luker made a substitute motion to send **S 1233** to General Orders with the following committee amendments: 1) remove "clear and convincing" from page 1, line 38 and page 2, line 8. 2) strike the word "substantial" from the phrase "substantial and material" on page 2, lines 1 and 9.

Mr. Aldridge explained that the standard should be high on the front end because we don't want to wait until child is damaged before we establish a guardianship. He provided several examples of damage to children with physical and psychological abuse he has witnessed as a guardian ad litem. He said there may be some instances where this heightened standard of proof will make it more difficult for the parents to regain guardianship but the courts are always looking for family unification when it can be done.

In support of the substitute motion, **Rep. Sims** made a comment that she has experience with the establishment and dissolution of a guardianship, and believes the clear and convincing evidence is necessary.

Mr. Aldridge explained that once the standard is outlined (or deleted) in the statute, you cannot use a heightened standard, that would be a violation of the statute. Also, the current practice would be codified only if **S 1233** is passed as written.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Jaquet made an amended substitute motion to hold **S 1233** in committee for a time certain allowing the bill sponsor to provide information to the committee from supporting parties.

Vice Chairman Luker clarified for the committee that the standard of review will be "preponderance of the evidence" if not specified in the statute.

**VOTE ON THE
AMENDED
SUBSTITUTE
MOTION:**

Motion was carried by voice vote. S 1233 will be held in committee for a time certain and will go before the committee on Monday, March 5, 2012.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:41 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
Upon Adjournment of the House
Room EW42
Wednesday, March 07, 2012

SUBJECT	DESCRIPTION	PRESENTER
S 1332	Attorney's Fees/witness fees/expense	Sen. Keough
S 1341	Sexual offender registration act	Sen. Bock
S 1275	Traffic safety education program	William Flink, Division Administrator for Peace Officer Standards & Training (POST), Idaho State Police (ISP)
S 1340	Court ordered testing, costs	Tony Poinelli, Idaho Association of Counties
S 1338	Enticing a Child	Joel Teuber, Fraternal Order of Police

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 07, 2012

TIME: Upon Adjournment of the House

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None.

GUESTS: R. David Moore, Blackfoot Police Dept.; John Evans, Garden City Mayor; Scot Haug, Post Falls Police Dept.; Michael Henderson, Idaho Supreme Court; Tony Poinelli, Idaho Association of Counties (IAC); Jerry Russell & Bill Flink, Peace Officer Standards & Training (POST)/Idaho State Police (ISP); Tim Brady & Joel Teuber, Fraternal Order of Police; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA)

Chairman Wills called the meeting to order at 2:14 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the February 29, 2012 committee meeting. **Motion was carried by voice vote.**

S 1341: **Sen. Bock** presented **S 1341**. He explained that this bill relates to **S 1385** (2010), which amended the definition of statutory rape. One item that was overlooked was that there are people currently required to register as a sex offender that would not be convicted as a sex offender under the new law. The only purpose of **S 1341** is to provide offenders with an avenue to remove themselves from the registry by petitioning the judge. A judge has the discretion to remove the offender from the registry. Sen. Bock pointed to page 2, lines 38-48, and explained that the language here will be stricken because it doesn't synchronize with **S 1385**. The operative language, on page 3, outlines the process for removal from the sex offender registry in the event the offender fits within the appropriate definition.

In response to committee questions, **Sen. Bock** said prosecutors support **S 1341**. He next explained the word "may" rather than "shall" is used in lines 11-12, because "shall" removes the judge's discretion to determine whether the person is within the exemption category. In closing, Sen. Bock said **S 1341** passed the Senate unanimously.

MOTION: **Rep. Shirley** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Reps. Shirley and Jaquet** will sponsor the bill on the floor.

S 1332: **Rep. Burgoyne** presented **S 1332**. He said we have seen this bill twice before, once in 2010, where it started in the House and § 1 of the bill amended how attorney's fees in administrative cases were treated. Previously, Administrative Hearing Officers could not award attorney's fees. **H 409** (2010) fixed this, then the Supreme Court held in the Smith decision that the Legislature did not adequately fix the matter. **H 409** was a trailer bill and is now found within **S 1332**, subsection 4, on the bottom of page 1- page 5. **S 1332** includes the necessary changes, subsection 4 and 5, and a technical correction in § 6. The new language states: Hearing officers, agencies and the courts may all award attorneys fees when the non-prevailing party has been frivolous in the administrative hearing itself or in the appeal. On page 1, line 38: in civil judicial proceedings where the adverse party is a government agency, the court shall award the adverse party attorney's fees.

The purpose is to require government agencies to only begin lawsuits where they have a reasonable probability of winning. The technical correction in subsection 6, line 18, Idaho Code § 13-120 pertains to any conduct or proceeding in court if the case is for \$25K or less and it clarifies how one party can send a demand letter to the opposing party and if there is no response within 10 days then that party can sue and receive a judgment. The \$25K amount will be changed to \$35K, as per another Senate bill from earlier in the 2012 session.

In response to committee questions, **Rep. Burgoyne** said the problematic language **H 209** (2011 legislative session) is not included in **S 1332**. **Rep. Luker** explained that the Legislative Services Office (LSO) will make a technical corrections that will change the \$25K threshold to \$35K. LSO can do so without additional legislation, and since this is a technical correction of the original statute the other bill would take precedence.

The committee questioned the limits on the addition of political subdivisions (page 2, line 7), and **Rep. Burgoyne** said he was not aware of additional political subdivisions, and this has not been an issue with colleges/universities. County commissioners sitting on the Board of Equalization would likely be included within this statute.

MOTION: **Rep. Ellsworth** made a motion to send **S 1332** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Reps. Burgoyne, Ellsworth and Luker** will sponsor the bill on the floor.

S 1275: **William Flink**, Division Administrator for POST/ISP, presented **S 1275**. He explained that various jurisdictions throughout Idaho have established traffic safety education programs and the purpose of these is to offer an alternative to fines, points, and insurance increases that are associated with traffic offenses. These cities/counties have been doing this without statutory authority to do so. **Rep. Wills** and **Sen. Darrington** brought an interim committee together in 2011 to find a solution to this issue. **S 1275** will establish the authority for counties and cities to offer the traffic safety education program, but it will remain a voluntary program. A fee would be charged for the program in lieu of the traffic violation fine, but the cost of that program may not be greater than the fine itself.

In response to committee questions, **Mr. Flink** stated that as of 2010, ten jurisdictions are providing this traffic education program, totaling an infraction fee diversion of about 3,500 fines across the state. One of the jurisdictions does not charge a fee and no programs charge a fee greater than the citation amount. Examples of fees are \$55.00, \$75.00, and \$100.00.

Cities and counties can participate in the program, and each county can do it individually. In regards to the substance of the course, the National Safety Council program is used. If a traffic violator chooses the program, the charge would not go on their insurance. This program is not designed for a serial traffic offender, and **Mr. Flink** said that the main purpose is to give those without a prior traffic violation a chance to avoid their first citation.

Some cities ceased providing the traffic education option in 2008 when the Attorney General issued an opinion on the matter, but would restart once statutory authority exists to do so. In regards to the fee structure: a portion of the fees earned on driver education "tuition" will be sent to the POST training fund and support for the Idaho State Repository (ISTARS).

Chief David Moore, Blackfoot Police Department (BPD) and Idaho Chief of Police Association, said this program has worked well in Blackfoot and the majority of the attendees gave an above average rating of the course. He said seniors have reported a positive re-education of the basic safety laws. He also said he worked on the 2011 interim committee that addressed this issue.

In response to committee questions, **Chief Moore** stated that Blackfoot has 5-8 people/class, which is given every 2 weeks. He explained that Post Falls was the first to offer the program, and Blackfoot uses the National Safety Standard materials for the class. Blackfoot charges \$55.00 for the class, which was determined to be an amount that allowed the BPD to be able to recover their costs. If someone chose to come to the class on their own volition, without a citation, each participant in the course would be charged the same amount.

Chief Moore explained the Chief's Association previously (before 2008) sent the funds they earned from the class to POST. POST currently cannot accept these funds without the enabling legislation.

Chief Scott Haug, Post Falls Police Department (PFPD), said 5,000 drivers have been educated so far, the community loves it, and traffic related incidents have decreased. He explained the 3 options when a citizen is stopped for a traffic violation: warning, citation, or traffic safety education program. The driver who chooses the program must sign up within 14 days. PFPD uses the ID Transportation Department's drivers manual and educational videos. The benefits include: no traffic citation, no points on record, and no interaction with the prosecutor which frees up court's schedule. PFPD has noticed improved driving after the education.

In response to committee questions, **Chief Haug** said officers receive training about traffic violations during their field training program (14 weeks) where officers are provided guidance on when and how to offer traffic school as an option. Generally, the officer should observe behavior and use their own discretion in deciding whether to offer the traffic school option. When it is chosen, the offender is issued a traffic safety summons which is available once every 18 months. Violators are permitted to choose the traffic safety school again, but the officer will examine their driving record if they plan on offering it a second time. When a violator is pulled over, previously issued traffic summons appears on their record, so the officer would know whether the traffic school has been chosen within the previous 18 months.

John Evans, Mayor of Garden City, said 5,400 people have been through the program since 2006. Parents have a chance to apply corrective action, and traffic school is offered in lieu of points on license and a fine which creates a positive response to policing in the community. In 2006, there were 413 traffic accidents in Garden City. In 2010, there were 250 accidents. Mr. Evans believes the class can be credited with the decrease in traffic accidents. The Garden City traffic school is given 2 times per month, is 4 hours long, and each class has approximately 35 attendees per class.

In response to committee questions, **Mr. Evans** confirmed his officers spend 8 hours/month for instruction and \$130,000 is generated from class fees a year, which covers the Garden City Police Department's costs. He said the Attorney General and private opinion differ as to whether the authority exists to offer this program, and the resolution of this issue will be to establish the authority in Idaho Code. He also confirmed the two issues within this bill are to make the authority clear and provide more fees for POST. Lastly, there are limits for out-of-state citizens; if these people receive a traffic ticket, that person would have to convince the officer that they would return to complete the school for that to be a viable option for them.

MOTION:

Rep. Bolz made a motion to send **S 1275** to the floor with a **DO PASS** recommendation.

In opposition to the motion, **Rep. Luker** said there is a problem with multiple cities using a different option to deal with infractions that defers monies that were formerly going into the infraction fund. Programs, other than POST and ISTARS, that rely on funding from the infraction fund will be hurt by this. Secondly, there is no cap in the bill, the only limit is what is stated in the city ordinance. Third, the AG opinion is being ignored and is skirting the legislative duty, and officer discretion can be a slippery slope.

Committee discussion included: differing cities and county jurisdictions are doing something without state approval and how the diversion created by the law which diverts funds for state programs is a problem. Also, the course will seem attractive, which will decrease funds earned from infraction citations.

In support of the motion, **Rep. Burgoyne** stated the AG's opinion makes a gray area for the cities/counties about authority on what to do.

Chairman Wills explained that this bill arose when cities were setting up programs with differing standards and rules. He said he believes there needs to be consistency and fairness throughout the state. He emphasized that if **S 1340** is not passed, each jurisdiction will continue using the program in their own way because there will be no standardized rules in place. Controlling officer discretion is alarming and should not be done.

The Committee expressed concern that they are stepping over the line where private businesses are conducting this type of programming.

**SUBSTITUTE
MOTION:**

Rep. Nielsen made a motion to send **S 1340** to the floor without recommendation.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Luker made a motion to hold **S 1275** in committee. The Chairman was unclear so he requested a roll call vote.

**ROLL CALL
VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Motion passed by a vote of 7 AYE, 5 NAY and 3 absent/excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Smith(24), Nielsen, Hart, Ellsworth, McMillan and Sims. Voting in opposition to the motion: Chairman Wills, Reps. Shirley, Bolz, Burgoyne, and Jaquet. Reps. Bateman, Perry, and Killen were absent/excused.

Rep. Nielsen gave notice of his intent to make a motion to reconsider his vote on **S 1275**. He explained that he would like to conduct further research on the topic before voting again.

S 1340:

Tony Poinelli, presented **S 1340**. He explained this bill relates to court ordered fees for bodily fluid tests. It applies only to court ordered costs and fees already outlined by the courts.

Michael Henderson, Legal Counsel for the Idaho Supreme Court, said the bill's purpose is to clarify the fees that can be assessed against a person on probation, in addition to the probation fees. Legislation in 1994 required probationers to pay for probation costs, rather than taxpayers. This bill clarifies that court ordered breath and bodily fluid tests as a condition of probation are not to be included in the cost of supervision fee authorized in Idaho Code § 20-225 and § 31-3201D. Also, the court may order the payment of other lawful costs and fees required of those on probation, and they must pay for these costs when they are able to do so. This statute applies to all probationers.

MOTION:

Rep. Jaquet made a motion to send **S 1340** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

S 1338: **Joel Teuber**, Fraternal Order of the Police, presented **S 1338**. He explained the purpose of this bill is to update child enticement laws in order to more closely match current methods of electronic enticement. He said this is supported by many organizations such as the Idaho Human Trafficking Organization. Lines 10-11, clarify that it is illegal to entice just one child. Lines 13-14 include all other possible electronic means of enticement. Lines 27-29 state that police and prosecutors do not have to wait for the perpetrator to succeed to be in violation of the statute. "Child" is changed to "person under 16" and the remaining changes clean up the code section.

MOTION: **Rep. Smith** made a motion to send **S 1338** to the floor with a **DO PASS** recommendation.

In response to committee questions, **Mr. Teuber** said this bill clarifies that the perpetrator does not have to succeed in the acts to be charged, the enticement alone is enough.

The committee expressed concern over the other acts that are included under Title 15 which would be included because they did not seem to apply or to be sexual in nature. **Mr. Teuber** pointed to lines 15-19 and said this applies only to the sexual acts within those chapters, so the other offenses would not be included. In regards to the possible removal of line 15, **Holly Koole**, IPAA, said that the bulk of Title 15 deals with children and vulnerable adults, but it would be possible to list the sex crimes individually. It would likely be easier and more clear to list only the exclusions in Title 15. The standard would be "beyond a reasonable doubt."

In support of the motion, **Vice Chairman Luker** said that, for example, the beer and wine offense would not apply here, and he is concerned that § 1509(a) is not required to be proved. **Mr. Teuber** pointed to lines 15-16, with a reference to a "sexual act" and said that if the enticement is not for a sexual act, then these offenses would not be included under the purview of **S 1338**.

SUBSTITUTE MOTION: **Rep. Ellsworth** made a motion to send **S 1338** to General Orders.

In support of the motion, **Rep. Hart** would like to add a few words of clarification because there is a need to create a narrow interpretation of the bill.

ROLL CALL VOTE: **Chairman Wills** called for a roll call vote on the substitute motion to send **S 1338** to General Orders. **Motion failed by a vote of 3 AYE, 8 NAY and 4 absent/excused.** Voting in favor of the motion: **Reps. Hart, Ellsworth, and Sims.** Voting in opposition to the motion: **Chairman Wills, Vice Chairman Luker, Reps. Smith(24), Nielsen, Shirley, Bolz, McMillan, and Jaquet.** Reps. **Bateman, Perry, Burgoyne and Killen** were absent/excused.

VOTE ON ORIGINAL MOTION: **Chairman Wills** called for a vote on the original motion to send **S 1338** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Reps. Ellsworth, Sims, and Hart** requested to be recorded as having voted **NAY.** **Rep. Jaquet** will sponsor the bill on the floor.

MOTION TO RECONSIDER: **Rep. Nielsen** made a motion for reconsideration of his vote on **S 1275.** **Motion failed by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:23 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 PM or Upon Adjournment
Room EW42
Tuesday, March 13, 2012

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1337a</u>	Sexual exploitation of a child	Joel Teuber, Fraternal Order of Police
<u>H 639</u>	Right to sue/contracts	Rep. Luker
<u>H 648</u>	Judgment, defendant examination	Senior District Judge Barry Wood
<u>H 651</u>	Judges, salaries	Patti Tobias, Administrative Director of the Courts
<u>PRESENTATION:</u>		
	Update from the Idaho Dept. of Juvenile Corrections	Sharon Harrigfeld, Director, ID Dept. of Juvenile Corrections

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 13, 2012

TIME: 1:30 PM or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan (McMillan), Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None.

GUESTS: Jim Kouril, Idaho Internet Crimes Against Children Taskforce (ICAC); Max Greenlee & Jason Risch, Risch Pisca; Tim Brady & Joel Teuber, Fraternal Order of Police (FOP); Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Scott Johnson, Kevin Bernatz, Skip Green, & Betty Grimm, Idaho Department of Juvenile Corrections (IDJC); Jan Sylvester; Judge Barry Wood & Patti Tobias; Idaho Supreme Court; Ross Edmunds, Department of Health & Welfare (IDHW)

Chairman Wills called the meeting to order at 2:14 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the March 7, 2012 committee meeting. **Motion carried by voice vote.**

S 1337A: **Joel Teuber**, Fraternal Order of Police, presented **S 1337a**. He explained that this bill has three purposes: 1) to remove the declaratory language by the legislature at the beginning of Idaho Code § 18-1507. 2) To amend the definition of Sexually Exploitative Materials so that offenders are not able to avoid arrest and prosecution simply because they are using new technology. This change would not allow for the arrest or prosecution of a person who is surfing the web and accidentally stumbles upon child pornography. The person has to "knowingly and willfully" access or possess the sexually exploitative material as delineated on page 3, lines 45-46 and the prosecutor would have to prove this beyond a reasonable doubt. 3) To address current trends in Child Pornography production and distribution. Because a child is equally victimized whether their image is sold vs. simply traded or given away, this bill proposes the removal of the language "for commercial purposes" from the Sexual Exploitation of a Child Law. Currently, this "commercial purpose" language allows those to be charged only with "possession" rather than distribution. He stated there is a connection between those who possess the child pornography and hands-on sexual acts.

Mr. Teuber also noted that the punishments did not change from existing law and any offense would have to be proved beyond a reasonable doubt. All other changes in the bill were simply made out of necessity to keep definitions and references consistent in order to not adversely affect other code sections. In closing **Mr. Teuber** said **S 1337a** is supported by the Idaho Sheriff's Association, the IPAA and the Idaho Human Trafficking Association.

In response to committee questions, **Mr. Teuber** said the definitions are neither intended to encompass the computerized examples of images that are not an actual child nor cover a drawing of a real child, the child would have to be a real person. The level of culpability is changed from "knowing" to "knowingly and willfully" upon recommendation from prosecutors who wanted to have a high threshold of proof.

Holly Koole, IPAA, stated that the IPAA supports this bill. In regards to the development of the bill, she said that prosecutors met with the Fraternal Order of Police and both organizations concluded that certain changes were needed to prevent loopholes in this law. For example, "commercial purpose" needed to be removed because offenders who were exchanging pornographic materials without compensation were falling outside the statutory definition. On page 4, paragraph 3, 2 b & c: seriousness of prison sentences, **Mr. Teuber** said that Section a is the access to the material and Sections b-d refers to the person who induces a child with that material. Ms. Koole said the Association of Defense Counsel was not involved in the drafting of this bill.

Mr. Teuber pointed to page 3, lines 45-46, and said "knowingly and willfully," the state of mind required at the time of the offense, applies to all Sections, a-d. **Ms. Koole** said the fine would be assessed at the time of sentencing by a judge and would be used to cover court costs, restitution, or for punitive purposes. There was further committee concern that none of the funds would go to help the victimized child. Ms. Koole explained there is a process for crime victims to receive counseling, via the Victim's Compensation Act, and the cost is covered by the state.

MOTION: **Rep. Killen** made a motion to send **S 1337a** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.**

H 639: **Rep. Luker** presented **H 639** and said this bill clarifies the forum where a suit can be brought. He explained people who contract cannot be required to appear outside the ordinary tribunals, meaning Idaho courts. There are often form contracts that contain a "forum choice clause" which may require an arbitration to occur in some other state. Business entities were concerned that arbitration would be affected, and this amendment preserves the right to arbitrate in Idaho. Rep. Luker said the purpose of this legislation is to confirm that it is against Idaho law to require anyone to waive their right to arbitrate in Idaho courts.

MOTION: **Rep. Smith(24)** made a motion to send **H 639** to **General Orders** with committee amendments attached. (Committee amendments clarified this does not impair arbitration contract agreements, except to require the forum to be in Idaho.) **Rep. Hart** seconded the motion.

Rep. Sims invoked Rule 38 stating a possible conflict of interest because she is the owner of several franchises but will be voting on the bill.

VOTE ON MOTION: **Motion was carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

H 648: **Senior District Judge Barry Wood** presented **H 648**. He said this bill would provide an improved method for screening felons to identify those with serious mental illness and drug abuse issues if they are placed on probation. Idaho Code § 19-2524, allowed the judge to order a substance abuse assessment and a mental evaluation. In 2009, § 19-2522 was amended by **H 626**: if the court determined the examination provided certain information then the court did not need to order an additional examination. **H 648** would amend § 19-2524, in 2 steps. First, the Idaho Department of Corrections (IDOC) would have to pay for the substance abuse assessments and the Idaho Department of Health and Welfare (IDHW) would have to pay for the mental health assessments. This ensures the use of standardized process at sentencing. The initial screening process determines a need for treatment and then the assessment phase will assign the appropriate treatment. This will also define "serious mental illness." As a result of this legislation, more offenders will go through the less costly screening process, however, fewer will need extended treatment, so the Courts estimate a net savings to the general fund. This bill is a product of collaboration between agencies and district court judges.

In response to committee questions, **Judge Wood** explained that competency evaluations cannot be used to meet the "intelligently consent" (to a mental health or drug abuse evaluation) requirement, and this person would have to be found competent in a prior assessment. In regards to the reimbursement schedule, he explained that any fees that would be assessed against the offender for the treatment programs would be based on need/ability to pay. Also, fee determination is made at the time the assessment is completed.

Ross Edmunds, IDHW, spoke in support of the changes. He said he believes there will be a cost increase to the IDHW and wants to conduct an analysis to determine this. He said the IDOC uses a sliding fee scale to determine ability to pay, a process that mimics the IDHW sliding scale system.

MOTION: **Rep. Bolz** made a motion to send **H 648** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Perry** made a substitute motion to **HOLD H 648** in committee for a time certain.

Reps. Nielsen, Smith(24) and Jaquet spoke in support of the original motion, stating the need to move the bill along and noted that the bill seems clear after reading the statement of purpose.

In response to committee questions, **Mr. Edmunds** said that the IDOC has appropriated the funds for a process used to address substance abuse disorder. Under Idaho Code § 19-2524, IDOC can internally evaluate those persons.

In support of the substitute motion, **Rep. Ellsworth** commented that the changes are not needed until next year and this bill needs further work. She said there are problems with the Fiscal Note, and supports the motion to hold for a time certain in order to get more comfortable with the bill.

VOTE ON THE SUBSTITUTE MOTION: **Motion to HOLD 648 in committee for time certain failed by voice vote.**

VOTE ON THE ORIGINAL MOTION: **Motion to send H 648 to the floor with a DO PASS recommendation passed by voice vote.** **Reps. Perry, Ellsworth** and **Hart** requested to be recorded as having voted NAY. **Reps. Smith(24) and Burgoyne** will sponsor the bill on the floor.

H 651: **Patti Tobias**, Administrative Director of the Courts, presented **H 651**. She said this bill changes the annual salary of justices of the Supreme Court, judges of the Court of Appeals, district judges and attorney magistrate judges beginning July 1, 2012. She said all appropriation bills voted on by JFAC resulted in a salary increase of 2% for all state employees including an increase to the judges salaries of 2%. Funding for **H 651** has already been included in the funding for the courts by JFAC. In closing, she said there has been a 30% increase in costs for civil disputes, as a result, cases are becoming increasingly complex and time consuming, creating a need for this increase.

MOTION: **Rep. Bolz** made a motion to send **H 651** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Nielsen** made a substitute motion to **HOLD H 651** in committee.

In response to committee questions, **Ms. Tobias** explained this bill only provides a 2% increase. The new salary for a Supreme Court justice is \$121,900.00. Today the salary is \$110,500.00.

In support of the motion, **Rep. Hart** said he believes this bill is necessary to retain quality justices and this money will be well spent.

**VOTE ON THE
SUBSTITUTE
MOTION:**

Motion to HOLD H 651 in committee failed by voice vote.

**VOTE ON THE
ORIGINAL
MOTION:**

Motion to send H 651 to the floor with a DO PASS recommendation passed by voice vote. Reps. McMillan and Nielsen requested to be recorded as having voted NAY. **Rep. Wills** will sponsor the bill on the floor.

Sharon Harrigfeld, Idaho Department of Juvenile Corrections (IDJC), introduced Betty Grimm, Skip Green, Kevin Bernatz, and Scott Johnson, of the IDJC, to the committee.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:32 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
Upon Adjournment of the House
Room EW42
Thursday, March 15, 2012

SUBJECT	DESCRIPTION	PRESENTER
H 660	Judges/justices/retirement	Patti Tobias, Administrative Director of the Courts Senior District Judge Barry Wood Rep. Lake

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Bateman
Vice Chairman Luker	Rep McMillan(McMillan)
Rep Smith(24)	Rep Perry
Rep Nielsen	Rep Sims
Rep Shirley	Rep Burgoyne
Rep Hart	Rep Jaquet
Rep Bolz	Rep Killen
Rep Ellsworth	

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
Phone: (208) 332-1127
email: snemore@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 15, 2012

TIME: Upon Adjournment of the House

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan (McMillan), Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Chairman Wills and Rep. Smith(24)

GUESTS: Judge Barry Wood and Patti Tobias, Idaho Supreme Court; Don Drum, Public Retirement System of Idaho (PERSI); Bill Roden, self; Rep. Dennis Lake

Vice Chairman Luker called the meeting to order at 2:43 p.m.

H 660: **Patti Tobias**, Administrative Director of the Courts, presented **H 660**. She explained that all three branches of government have worked together to stabilize the Judge's Retirement Fund and hopes this will provide additional judicial resources and help meet public expectations for an efficient judicial process. An agreement was reached on January 26, 2012 and was recommended to Speaker Denney, Senate Pro Tem Hill, Governor Otter and Chief Justice Burdick and revised by leadership. This bill meets all requirements and PERSI has accepted the transfer of the retirement fund as proposed in **H 660**. Ms. Tobias credited Reps. Lake, Hartgen, Bolz and Wills who contributed to the drafting of the bill.

Senior District Judge Barry Wood said that the Judges' Retirement Fund (JRF), created in 1947, is the oldest public retirement fund in Idaho, and is outlined in Idaho Code § 1201-1212. It was designed as part of a recruitment and retirement plan for judges in Idaho. The purpose of the JRF is to align contributions with expenditures, and contributions to the fund need to be increased to reduce and eliminate the underfunded future obligation. The Idaho Supreme Court recommended that all three sources (employee contribution, employer contribution, and the judicial retirement civil filing fee dedication) to the fund should be increased.

Judge Wood next outlined the changes that will be enacted by the bill: (1) The employer's rate of contribution is increased from 7% to 10.5% in two steps in FY 2013 and FY 2014. This change is already accounted for in the Governor's budget. (2) The employee's rate of contribution is increased from 6% to 9% in two steps in FY 2013 and FY 2014 as well. (3) Increase in the civil filing fee by \$8.00, to \$26.00. (4) Amendments to two statutory provisions to Plan B. First, senior judge service requirement is 60 days of service/year for 5 years; second, judges eligible for retirement at age 55 with 15 years of service are no longer eligible for Plan B service. (5) Surviving spousal benefit would be rolled back to 30%, from 50%, of the retirement compensation. (6) Annual cost of living adjustment for justices/judges taking office beginning July 1, 2012 would be the same as the PERSI COLA for that year. (7) Administration of the plan would be transferred to PERSI. (8) There will be a fiscal year-end report submitted to the chairmen of the Senate and House Judiciary and Rules Committees.

Judge Wood discussed the bill's organizational structure and effective dates. There are 13 sections total and section 13 contains the effective date provisions.

MOTION: **Rep. Bateman** made a motion to send **H 660** to the floor with a **DO PASS** recommendation.

In response to committee questions, **Judge Wood** said the initial agreement that was reached for the civil filing fee cost was a \$6.00 increase. Senate and House leadership met, and they agreed to increase the filing fee by \$8.00. Also, those judges eligible for retirement at age 55 and have at least 15 years of service, would no longer be eligible for Plan B service. (Plan B judges serve at no compensation cost to the General Fund, aside from travel and per diem expenses. They serve for 35 days per year for five years in exchange for increased retirement benefits from the Judges' Retirement Fund and annual health benefits during the Plan B service.)

**SUBSTITUTE
MOTION:**

Rep. Hart made a motion to hold the bill in committee until the Monday, March 19, 2012 committee meeting. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:58 p.m.

Representative Luker
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 or Upon Adjournment
Room EW42
Monday, March 19, 2012

SUBJECT	DESCRIPTION	PRESENTER
H 660	Judges/justices/retirement	Patricia Tobias, Administrative Director of the Courts Senior District Judge Barry Wood Rep. Lake

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan(McMillan)
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, March 19, 2012

TIME: 1:30 or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Rep. Hart

GUESTS: Patti Tobias & Judge Barry Wood, Idaho Supreme Court; Rep. Dennis Lake; Don Drum, Public Retirement System of Idaho (PERSI); Jan Sylvester

Chairman Wills called the meeting to order at 2:45 p.m.

H 660: **Patti Tobias**, Administrative Director of the Courts, presented **H 660**. She referred to comments made on **H 660** at the previous committee meeting on March 15, 2012.

Senior District Judge Barry Wood reviewed the eight major points he made at the previous committee meeting. He said the contribution portion will be done in two steps: (1) The employer's rate of contribution is increased from 7% to 10.5% in two steps in FY 2013 and FY 2014. This change is already accounted for in the Governor's budget. (2) The employee's rate of contribution is increased from 6% to 9% in two steps in FY 2013 and FY 2014. There is also an increase to the civil filing fee costs, from \$18.00 to \$26.00 as another means of contribution to the Judges' Retirement Fund (JRF). This bill contains amendments to two statutory provisions regarding Plan B retirement expenditures. Those judges who become eligible for retirement when they reach age 55 would not be eligible for Plan B retirement. Judges taking office after the effective date of legislation would be affected by this plan.

Rep. Dennis Lake gave the history behind **H 660**. In 2000, **H 760** provided enhancements to the retirement benefit. At that time, there was inadequate funding for those enhancements, and currently this retirement system is behind about \$1 million/year in funding. In 2006, **S 1408** provided additional funding, but did not pass the House floor. In 2008, a funding mechanism bill did not pass because it failed to address the benefits issue. In 2010, an agreement was formed which enhances the contribution from filing fees. When the JRF is controlled by the Public Employee Retirement System of Idaho (PERSI), PERSI will have the right to reduce the contribution rates as they see fit. Class B judges must now serve 60 days, rather than 35 days to qualify. Current sitting judges have a property right in the existing retirement plan. New judges will be governed by the new plan, but current judges must begin contributing to the new plan once enacted. He also indicated this bill is a product of a long series of negotiations and has been a hard-fought battle.

In response to committee questions, **Ms. Tobias** said the analysis of the relationship between the Cost of Living Adjustment (COLA) and the current increase shows results are comparable. She explained that increases in judges' salaries over time have been more sporadic, with greater increase amounts than that of PERSI retirees whose benefit increases have been more frequent, but in smaller increments. **Rep. Lake** said this was not a financial trade-off and the goal is to obtain uniformity with PERSI. **Ms. Tobias** said that no other court employees are included under the JRF and all are under PERSI. The retirement board referenced on page 3 is the PERSI Retirement Board, which is defined on page two of the proposed legislation.

MOTION:

Rep. Burgoyne made a motion to send **H 660** to the floor with a **DO PASS** recommendation.

In response to committee questions, **Judge Wood** explained that the working group negotiated the \$6.00 filing fee increase. Later, House/Senate leadership agreed on an \$8.00 increase. Additionally, the \$8.00 civil filing fee increase will generate a total of \$724,000. The contribution increase of 3% by the judges and the 3.5% increase by the employer is a product of the negotiations from this bill. **Rep. Lake** explained the judge's contribution will be a 50% increase, and the employer contribution will be increased by 33%.

In regard to whether there would be a cap placed on the additional revenue created, **Judge Wood** said there would not be a cap, per se, but the level of filings overall has remained fairly constant. **Rep. Lake** explained it will take 14 years for the \$8.00 increase to pay for the unfunded liability.

Judge Wood said that once the JRF is transferred over to PERSI, the PERSI Board can either increase/decrease the funding requirements so they would decide whether or not to cease the \$8.00 increase in civil filing fees. The contribution and filing fees will decrease because the ratio would decrease. **Rep. Lake** clarified that the contribution fees may only be changed by the Legislature or by the PERSI Board. There was concern from a committee member that the public will have to continue contributing to the fund for many years to come.

In support of the motion, **Rep. Bolz** said **H 660** is the best compromise arrived at by all committees on this topic. At the beginning, the purpose of this legislation was to deal with unfunded liabilities of the JRF. He hopes the committee will support this vast effort to remedy this problem. **Chairman Wills** echoed that this has been a long fought battle and compromise, and he hopes the committee would recognize this. **Ms. Tobias** stated that Senate and House leadership, the Governor's office and the Supreme Court took part in drafting this legislation. Senate and House leadership worked together to arrive at the \$8.00 increase to civil filing fees. Senator Darrington, Chairman, Senate Judiciary & Rules Committee, is prepared to hold a hearing on **H 660** and is expecting Senate support.

SUBSTITUTE MOTION:

Rep. Nielsen made a motion to send **H 660** to the **second reading calendar**. In support of the motion, he said it is important to have the most qualified persons as judges in Idaho.

Chairman Wills ruled the substitute motion out of order.

VOTE ON THE ORIGINAL MOTION:

Motion to send H 660 to the floor with a DO PASS recommendation was carried by voice vote. Rep. Lake will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned 3:18 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Tuesday, March 27, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 27, 2012

TIME: 1:30 pm or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Reps. Sims, Ellsworth, and Smith(24)

GUESTS: None.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the March 13, 2012 committee meeting. **Motion was carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes from the March 15, 2012 committee meeting. **Motion was carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve the minutes from the March 19, 2012 committee meeting. **Motion was carried by voice vote.**

Chairman Wills recognized **Courtney Wills**, House Page, and **Stephanie Nemore**, Committee Secretary, for their service during the session.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:25 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary